

Highly Confidential - Subject to Further Confidentiality Review

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 IN RE: NATIONAL)
PRESCRIPTION) MDL No. 2804
5 OPIATE LITIGATION)
THIS DOCUMENT RELATES TO:) Case No.
1:17-MD-2804)
6 The County of Summit, Ohio) Hon. Dan A.
et al. v. Purdue) Polster
7 Pharma L.P., et al.)
Case No. 17-OP-45004)
8 The County of Cuyahoga v.)
9 Purdue Pharma L.P., et al.)
Case No. 18-OP-45090)
10
11 TUESDAY, APRIL 30, 2019
12
13 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
14 CONFIDENTIALITY REVIEW
15 - - -
16 Videotaped deposition of Thomas G.
17 McGuire, Ph.D., Volume II, held at the offices
18 of Robins Kaplan LLP, 800 Boylston Street,
19 Suite 2500, Boston, Massachusetts, commencing
20 at 8:31 a.m., on the above date, before
21 Carrie A. Campbell, Registered Diplomat
22 Reporter and Certified Realtime Reporter.
23
24 - - -
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Page 395

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Page 396

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Page 397

Highly Confidential - Subject to Further Confidentiality Review

1	INDEX		
2		PAGE	
3	APPEARANCES.....		393
4	EXAMINATIONS		
5	BY MR. KEYES.....		400
6	BY MR. LONERGAN.....		730
7	BY MR. CARTER.....		788
8	BY MR. HALLER.....		835
9	BY MR. SOBOL.....		846
10	BY MR. HALLER.....		847
11			
12	EXHIBITS		
13	No.	Description	Page
14	McGuire 6	Report of Professor Thomas McGuire Regarding Public Nuisance, March 25, 2019	606
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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Page 398

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1 VIDEOGRAPHER: We are now on
 2 the record. My name is Robert
 3 Martignetti. I'm a videographer for
 4 Golkow Litigation Services.
 5 Today's date is April 30, 2019,
 6 and the time is 8:31 a.m.
 7 This continued video deposition
 8 of Thomas McGuire is being held in
 9 Boston, Massachusetts, in re: National
 10 Prescription Opiate Litigation.
 11 Will counsel that was not
 12 present for the first part of this
 13 deposition please identify themselves.
 14 MR. ARNOLD: Andrew Arnold from
 15 Motley Rice for plaintiffs.
 16 MS. SACKS: Shayna Sacks,
 17 Napoli Shkolnik, for Cuyahoga County.
 18 MR. CARTER: Ed Carter for
 19 Walmart.
 20 VIDEOGRAPHER: The court
 21 reporter is Carrie Campbell.
 22 Professor McGuire, do you
 23 understand that you're still under
 24 oath?
 25 THE WITNESS: Yes, I do.

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Page 399

1 DIRECT EXAMINATION (CONTINUED)

2 QUESTIONS BY MR. KEYES:

3 Q. Good morning, Professor

4 McGuire. This is day two of your deposition.

5 Day one was last Tuesday, April 30th {sic}.

6 Do you understand you're still

7 under oath today?

8 A. I do understand, yes.

9 Q. What, if anything, did you do

10 in connection with your engagement in this

11 case since you finished your testimony on day

12 one?

13 A. I continued to study my

14 reports. I had a phone call with staff

15 Compass Lexecon. I requested and reviewed as

16 best I could several of the depositions that

17 took place since my initial day, and I met

18 with Tom Sobol yesterday, and I had a brief

19 call with David Ko yesterday as well.

20 Q. Anything else?

21 A. No, that's all that I can

22 recall.

23 Q. You said you continued to study

24 your reports.

25 Do you mean both your report on

1 what you call damages and your report on what

2 you call the public nuisance?

3 A. Yeah, those are the two reports

4 I'm referring to.

5 Q. And did you read them in their

6 entirety?

7 A. I would say, yes, I read them

8 in their entirety.

9 Q. How much did you spend, quote,

10 studying your two reports in the last week?

11 A. I would say I spent maybe six

12 to eight hours.

13 Q. You said you had a phone call

14 with come Compass Lexecon?

15 A. That's right.

16 Q. Who did you speak with at

17 Compass Lexecon?

18 A. I spoke with Alice Kaminski.

19 And there was another Compass Lex staff

20 person in the room, but I didn't catch her

21 name.

22 Q. And this was a phone call --

23 A. Yes.

24 Q. -- as opposed to as in-person

25 meeting?

1 A. Yes, it was a phone call.

2 Q. How long was the call?

3 A. It was less than half an hour,

4 I would say.

5 Q. And when was the call?

6 A. I spoke with Alice yesterday.

7 Q. Did anyone participate in this

8 call besides you, Alice Kaminski and this

9 other person from Compass Lexecon whose name

10 you don't know?

11 A. No, there was no other person

12 on the call.

13 Q. Just the three of you?

14 A. Just the three of us.

15 Q. Who initiated this phone call?

16 A. Do you mean who requested the

17 phone call or who --

18 Q. Yes.

19 A. -- actually dialed the number?

20 Q. Who requested the phone call?

21 A. I requested the phone call.

22 Q. Why?

23 A. Because I had a question about

24 some part of the calculations.

25 Q. Okay. And what was your

1 question?

2 A. My question was I wanted to

3 review the OUD, opioid use disorder,

4 prevalence estimates.

5 Q. What was your specific question

6 about the OUD prevalence estimates?

7 A. I just wanted to review the

8 entire section, so we just went through --

9 it's a certain appendix to my report. We

10 just went through it again.

11 Q. And did you ask her to explain

12 it to you?

13 A. Well, we just -- we reviewed

14 it, so she helped me remember some of the

15 stuff that was done there.

16 Q. What did she help you remember?

17 A. Really the entire operation.

18 Q. What do you mean "the entire

19 operation"?

20 A. I mean the procedure by which I

21 estimated prevalence.

22 Q. Can you be more specific about

23 what she helped you remember about the

24 procedure by which you estimated the

25 prevalence of OUD?

1 A. Well, as I said, we went
 2 through the entire appendix step by step,
 3 so...

4 Q. And she helped you reconstruct
 5 the various steps that were taken in your
 6 report to estimate the prevalence of OUD?

7 MR. SOBOL: Objection.

8 THE WITNESS: Well, we
 9 discussed the -- and reviewed the
 10 attachment to my report, Attachment D
 11 or whatever it is.

12 QUESTIONS BY MR. KEYES:

13 Q. Did you talk to Ms. Kaminski
 14 and this other person from Compass Lexecon
 15 about anything else during your call
 16 yesterday?

17 A. Actually, we did.

18 I asked them a question about
 19 the crime estimates to remind me of the
 20 nature of the -- some of the data I used in
 21 the report.

22 Q. Okay. And what specific data
 23 are you referring to?

24 A. There's an abbreviation for the
 25 data. It's NIBRS, national institute --

1 sorry, National Incident Based Reporting
 2 System. It's maintained by the FBI.

3 Q. Okay. But what was your
 4 specific question?

5 Did you ask her what NIBRS
 6 stands for?

7 A. No. No. I could look up that
 8 easy enough.

9 Q. Then what was your specific
 10 question?

11 A. My specific question was the --
 12 to remind me about the coverage of that data
 13 set, which is incomplete.

14 Q. How was it incomplete?

15 A. The data set includes units
 16 that report, and not all units report data
 17 into the reporting system.

18 Q. Which units do not report into
 19 that system?

20 A. Well, I think it varies across
 21 the country, really.

22 Q. You said you asked the
 23 question.

24 Did she give you an answer?

25 A. Well, she reminded me that that

1 was true, for example, and that the coverage
 2 in our counties was -- while not 100 percent,
 3 was good.

4 Q. And can you quantify good, if
 5 not 100 percent?

6 A. I think around 80 percent.

7 Q. Did you talk to Ms. Kaminski or
 8 the other person from Compass Lexecon about
 9 anything else regarding the crime estimates
 10 set forth in your report?

11 A. No, I didn't. That was the
 12 only question I asked about crime.

13 Q. Okay. Besides the questions
 14 you asked about how you had estimated the
 15 prevalence of OUD and the question you asked
 16 about the crime estimates in your report, did
 17 you cover any other topics with Ms. Kaminski?

18 A. No, those were the only two
 19 topics that we covered.

20 Q. And separate from that phone
 21 call with Ms. Kaminski and this other unnamed
 22 person from Compass Lexecon yesterday, did
 23 you speak with anyone from Compass Lexecon
 24 about this engagement since your first day of
 25 deposition last Tuesday?

1 MR. SOBOL: Objection.

2 THE WITNESS: The phone call
 3 yesterday was the only conversation I
 4 had with anyone at Compass Lexecon.

5 QUESTIONS BY MR. KEYES:

6 Q. In your first day of deposition
 7 testimony, you mentioned a number of other
 8 people on the Compass Lexecon team that
 9 assisted you.

10 Do you remember that?

11 A. I do remember that.

12 Q. Did you speak with any of those
 13 other people since your deposition last
 14 Tuesday?

15 A. The only people from Compass
 16 Lex I spoke to were Alice and her colleague
 17 yesterday.

18 Q. And did Ms. Kaminski give you
 19 anything in writing either before or after
 20 yesterday's call?

21 A. No, Alice gave me nothing in
 22 writing in the week since.

23 Q. How about the other person on
 24 this call yesterday?

25 A. No, nothing.

1 Q. How about anyone else from
2 Compass Lexecon?

3 A. There was no one else from
4 Compass Lex that sent me any written
5 material.

6 Q. You said you studied
7 depositions since your first day of
8 deposition testimony; is that correct?

9 A. I'm not sure I used the word
10 "studied." I requested depositions and
11 looked at them as best I could.

12 Q. What depositions did you
13 request?

14 A. I requested depositions of
15 Dr. Schumacher, Professor Cutler and
16 Professor Gruber.

17 Q. Did you request any other
18 deposition transcripts?

19 A. No, I didn't. Those were the
20 only depositions I requested.

21 Q. Did you get all three?

22 A. I did get all three, yes.

23 Q. Who did you get them from?

24 A. I got them from counsel. I
25 think there probably were more than one

1 source. I'm not -- I don't remember who sent
2 what.

3 Q. And you say you looked at the
4 depositions. What do you mean?

5 Did you read them?

6 A. Well, I didn't read them in
7 their entirety. As my mother would say about
8 something like this, my eyes were bigger than
9 my stomach.

10 They're about 400 pages, and
11 I -- "studied them" is too strong a word.
12 Something like "reviewed them" would be a
13 good word.

14 Q. Okay. And if you didn't review
15 them in their entirety, how did you decide
16 what parts to read and what parts to skip
17 over?

18 A. I just -- I looked at the
19 pages. I seemed -- I tried to look for
20 things that seemed that might be relevant to
21 me, and I did the best I could in the time
22 that I had.

23 Q. Well, how much time did you
24 spend reviewing these three deposition
25 transcripts?

1 A. In total?

2 Q. In total.

3 A. I would say about three hours
4 in total.

5 Q. And how much of that three
6 hours did you spend reviewing
7 Dr. Schumacher's deposition testimony?

8 A. I would say maybe it wasn't
9 quite an hour for each deposition, but maybe
10 a bit more for Schumacher and a bit less for
11 the other two.

12 Q. And why is that? Why did you
13 spend more time on Dr. Schumacher's
14 deposition transcript than the other two?

15 A. The reason I spent more time
16 with that -- ideally, of course, I'd have all
17 the time in the world. It had to do with
18 when I received them and how much time I
19 could set aside at the time I got the
20 depositions.

21 Q. So when did you review the
22 three transcripts?

23 A. I believe I reviewed all three
24 transcripts yesterday.

25 Q. Did you request the deposition

1 testimony of anyone else besides these three
2 people?

3 A. Those were the only three
4 depositions I requested.

5 Q. Did you request the deposition
6 testimony of any fact witness in the case?

7 A. In the time between my last
8 meeting with you and today?

9 Q. Yes.

10 A. No. These were the only three
11 depositions I requested, period.

12 Q. Did you speak with
13 Dr. Schumacher since the first day of your
14 deposition?

15 A. No, I did not speak with
16 Dr. Schumacher.

17 Q. How about Professor Cutler?

18 A. I did speak with Dr. Cutler.

19 Q. How about Professor Gruber?

20 A. No, I didn't speak with
21 Professor Gruber.

22 Q. So in addition to the things
23 you list before that you had done since your
24 first day of deposition, you also spoke with
25 Professor Cutler, correct?

1 A. I did speak with Professor
2 Cutler but not about my testimony.
3 Q. Okay. What did you speak with
4 Professor Cutler about?
5 A. We were at a dinner together.
6 It's called a program dinner.
7 David Cutler is the head of the
8 Ph.D. training program for Ph.D. in health
9 policy at Harvard University. I'm the
10 director of admissions of that, and I was
11 among the faculty that attended the dinner.
12 There were some students, and I spoke with
13 David at the dinner.
14 Q. Did you speak with him about
15 his deposition?
16 A. No, I didn't.
17 Q. Did you speak with him about
18 your deposition?
19 A. Not at all, no.
20 Q. Did you speak with him about
21 any of the work that either of you had
22 performed in this case?
23 A. There was no substantive
24 discussion -- excuse me. There was no
25 substantive discussion of any kind of the

1 material in this case or really any other
2 area of economic research.
3 Q. Since you finished your
4 deposition testimony last Tuesday, did you
5 speak with any other expert who either is
6 offering opinions in this case or who
7 provided an expert report in this case?
8 A. Since Tuesday, I don't think
9 I've spoken with anyone else.
10 Q. And did you speak with any fact
11 witness in this case since your first day of
12 deposition?
13 A. No, I spoke to no fact witness
14 since last Tuesday.
15 Q. You also mentioned that you had
16 met with Mr. Sobol, and you had a brief call
17 with Mr. Ko?
18 A. That's right.
19 Q. How long was your meeting with
20 Mr. Sobol?
21 A. It was about an hour, I would
22 say.
23 Q. How long was your call with
24 Mr. Ko?
25 A. My call with David was less

1 than half an hour.
2 Q. And were both the meeting with
3 Mr. Sobol and the call with Mr. Ko yesterday?
4 A. They were both yesterday, yes.
5 Q. So you had a long day yesterday
6 in this case to prepare for today's
7 deposition?
8 A. Well, that only accounts for
9 about six hours in total.
10 Q. Would you open your report on
11 damages to -- which is Exhibit Number 1,
12 giving you back the original, and would you
13 turn to Appendix 4.C-1.1?
14 A. Okay.
15 Okay. I think I'm there.
16 Q. Do you have Appendix 4.C-1.1 in
17 front of you?
18 A. I do, yes.
19 Q. Okay. And this is titled
20 "Cuyahoga ADAMHS Board damages."
21 Correct?
22 A. I see that, yes.
23 Q. Okay. Turn your attention to
24 line 2. There's a line that says,
25 "Opioid-Related Percentage of Services."

1 Do you see that?
2 A. I do see that.
3 Q. Okay. And then it lists a
4 percentage for each year from 2006
5 through 2017.
6 Do you see that?
7 A. I see that, too.
8 Q. And then there's a note for
9 note 2 that says, quote, "Based on metric
10 analysis in the Cutler report, see Table 3.5
11 sub 3."
12 Do you see that?
13 A. I also see that, yes.
14 Q. Okay. And when you say "based
15 on the metric analysis in the Cutler report,"
16 you mean you took the percentage from Cutler
17 report Table 3.5 sub 3 and you just put it
18 into your calculations, correct?
19 MR. SOBOL: Objection.
20 THE WITNESS: Well, it's based
21 on. It doesn't -- I would have to
22 remind myself what 3.5.3 that Cutler
23 did to be -- to refresh my memory
24 about -- of what percent this is.
25

1 QUESTIONS BY MR. KEYES:

2 Q. Well, he had a percentage in

3 that table, correct?

4 MR. SOBOL: Objection.

5 QUESTIONS BY MR. KEYES:

6 Q. That was titled "Opioid-Related

7 Percentage of Services"?

8 MR. SOBOL: Objection. The

9 document's not in front of him.

10 THE WITNESS: Yeah, I'd have to

11 take another look to remind myself

12 what this refers to exactly.

13 Excuse me. This shows you the

14 source, and, you know, I would need to

15 see the source in order to make a

16 determination.

17 QUESTIONS BY MR. KEYES:

18 Q. Okay. Sitting here right now,

19 do you know whether you just took the

20 calculation -- the percentage that Professor

21 Cutler had in that table and put it in your

22 table or whether you did something else to

23 his percentage?

24 MR. SOBOL: Objection. Asked

25 and answered.

1 THE WITNESS: Well, this number

2 is based on Professor Cutler's

3 analysis, and to be able to

4 reconstruct where this came from, I

5 would need to look at what David

6 actually reported.

7 QUESTIONS BY MR. KEYES:

8 Q. So sitting here right now, when

9 you offered this opioid percentage of

10 services, you can't tell me how you arrived

11 at that number?

12 MR. SOBOL: Objection. Asked

13 and answered.

14 THE WITNESS: This note

15 explains the source. And I'm happy,

16 if you have happen to have that

17 report, that I can take a look at it

18 and make a determination.

19 QUESTIONS BY MR. KEYES:

20 Q. Okay. I understand that if you

21 read Cutler's report, it may refresh or

22 remind you --

23 A. Yeah, it certainly will.

24 Q. -- but I'm entitled to probe

25 what you know without looking at a document

1 or some kind of cheat sheet.

2 MR. SOBOL: I disagree with

3 that about his entitlements or not.

4 And you're not to listen to what he

5 says about what he's entitled to or

6 not entitled to do.

7 QUESTIONS BY MR. KEYES:

8 Q. So sitting here today, can you

9 tell me what you did to take the percentages

10 that you say are in the Cutler report at

11 Table 3.5 sub 3 to arrive at the percentages

12 you list here on line 2?

13 MR. SOBOL: Objection. Asked

14 and answered.

15 THE WITNESS: Well, what note 2

16 says is it's based on the metric

17 analysis in the Cutler report. As I'm

18 sitting here today, I can't

19 reconstruct where these numbers came

20 from based on that analysis.

21 QUESTIONS BY MR. KEYES:

22 Q. Would it surprise --

23 MR. SOBOL: He hasn't finished

24 his answer.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Did you finish your answer?

3 A. I don't think I need to say

4 anything more.

5 Q. Okay. Would it surprise you if

6 you just took the percentages in

7 Professor Cutler's table and incorporated

8 them here as line 2?

9 Would that surprise you?

10 MR. SOBOL: Objection. Asked

11 and answered.

12 THE WITNESS: Well, I don't

13 know if it would surprise me or not.

14 There are aspects of Cutler's

15 percentages that I did take and use

16 directly, but I don't want to -- I

17 don't feel like I can commit myself to

18 doing that unless I actually refresh

19 my memory about the Cutler report.

20 QUESTIONS BY MR. KEYES:

21 Q. Okay. Would you return to

22 Appendix 4.C-2.1.

23 Are you there?

24 A. I'm there, yes.

25 Q. And this is titled "Cuyahoga

1 Division of Children and Family Services
2 Damages"?
3 A. Yeah, I see that.
4 Q. And do you see line 9 says,
5 "Opioid-Related Percentage of Removals"?
6 A. I see that, yes.
7 Q. And it then has a note 9.
8 Note 9 says, "Based on metric analysis in the
9 Cutler report, see Table 3.6 sub 1"?
10 A. I see that.
11 Q. Okay. So did you take the
12 percentages that were in that referenced
13 Cutler table and incorporate in this line, or
14 did you do something additional to those
15 percentages?
16 A. This is the same situation for
17 me. It's based on the metric analysis in
18 Cutler's report, but for me to determine
19 whether there -- I just kind of took them in
20 a sense or whether I had to do something
21 else, I really would need to refresh my
22 memory about.
23 Q. So you can't explain sitting
24 here right what, quote, "based on" means?
25 MR. SOBOL: Objection. Asked

1 and answered.
2 THE WITNESS: I can explain
3 what "based on" means. You know, it's
4 a typical form of academic citation
5 that if you use something, you make a
6 reference to the source of that thing
7 without going through necessarily all
8 the manipulations that led to that
9 number.
10 QUESTIONS BY MR. KEYES:
11 Q. You say it's a typical form of
12 academic citation.
13 When you take a figure from
14 another source and you incorporate that into
15 your work, do you cite the source, or do you
16 say "based on" the source --
17 MR. SOBOL: Objection.
18 QUESTIONS BY MR. KEYES:
19 Q. -- as a matter of your general
20 practice?
21 MR. SOBOL: Objection.
22 THE WITNESS: If I understand
23 your question, you're asking about an
24 academic article that wouldn't be
25 necessarily part of a litigation.

1 QUESTIONS BY MR. KEYES:
2 Q. Well, let's take them one at a
3 time.
4 In your nomenclature, when you
5 say "based on," is that saying "I got the
6 figure from the cited source and here it is,"
7 or are you saying "I got information from the
8 cited source and then I did something else to
9 arrive at the number I'm listing here"?
10 MR. SOBOL: Objection. Asked
11 and answered.
12 THE WITNESS: When I say "based
13 on" -- and I think this would apply
14 here as well as it would apply if I
15 were doing an academic paper -- it
16 could refer to either. It doesn't say
17 it is the number, it doesn't say
18 describe the calculation, but it
19 points the reader to where one would
20 need to look in order to figure it
21 out.
22 QUESTIONS BY MR. KEYES:
23 Q. Did you do any independent work
24 to arrive at what you list here as the
25 opioid-related percentage of removals?

1 MR. SOBOL: Objection. Asked
2 and answered.
3 THE WITNESS: Well, I think
4 the -- so we're -- are we -- Table
5 4.C-2.1 is what we're talking about?
6 QUESTIONS BY MR. KEYES:
7 Q. We're still on
8 Appendix 4.C-2.1, line 9, where you list
9 percentages for each year for, quote,
10 opioid-related percentage of removals.
11 Did you do any independent work
12 to arrive at those figures?
13 MR. SOBOL: Objection. Asked
14 and answered again.
15 THE WITNESS: Well, these are
16 based on Professor Cutler's report, so
17 they would derive from Professor
18 Cutler's work, not derive from my own.
19 QUESTIONS BY MR. KEYES:
20 Q. So is that to say, no, I did
21 not do any independent work?
22 MR. SOBOL: Objection.
23 QUESTIONS BY MR. KEYES:
24 Q. I'm trying to understand what
25 you did, Professor McGuire.

1 So when you list opioid-related
2 percentage of removals and you give a
3 percentage for each year, I want to know:
4 Did you just take that from Professor Cutler,
5 or did you do some work yourself to arrive at
6 those percentages?
7 MR. SOBOL: Objection. I
8 instruct you not to answer.
9 MR. KEYES: Really. On what
10 basis?
11 MR. SOBOL: Move on.
12 QUESTIONS BY MR. KEYES:
13 Q. Are you refusing to answer the
14 question of whether you did any independent
15 work to arrive at line 9 on this chart?
16 A. I'm following directions.
17 Q. Okay. Would you turn to
18 Appendix 4.C-3.1?
19 A. Okay.
20 Q. Are you there?
21 A. I am.
22 Q. And this is titled "Cuyahoga
23 Office of Prosecutor Damages"?
24 A. I see that.
25 Q. And line 10 says,

1 "Opioid-Related Percentage of Charges"?
2 A. I see that, yes.
3 Q. And you list a percentage for
4 each year from 2006 to 2017, correct?
5 A. Yes, I see that.
6 Q. And line 10 has a cite which
7 says, "Based on metric analysis in the Cutler
8 report, see Table 3.4 sub 3."
9 Do you see that?
10 A. I do, yes.
11 Q. Okay. Did you just take the
12 percentages that Professor Cutler had
13 calculated and incorporate them here, or did
14 you do something to those percentages?
15 A. I would have to answer in the
16 same way that I've answered your previous
17 questions about the previous two tables. In
18 order to be sure, I would like to -- I would
19 need to refresh myself about what David's
20 Table 3.4.3 consisted of.
21 Q. Did you do any independent work
22 to determine the, quote, "opioid-related
23 percentage of charges" that you list here for
24 each of those years?
25 MR. SOBOL: Objection. Asked

1 and answered.
2 MR. KEYES: No, I haven't asked
3 him that. This is a different line.
4 MR. SOBOL: No, you have.
5 THE WITNESS: Well, as note 10
6 says, this is based on the analysis in
7 Professor Cutler's report.
8 To be able to reconstruct it,
9 I'd have to go back and see what David
10 had done.
11 QUESTIONS BY MR. KEYES:
12 Q. Okay. Would you turn to
13 Appendix 4.C-4.1.
14 Are you there?
15 A. I'm there, yes.
16 Q. And this is titled "Cuyahoga
17 Office of Public Defender Damages."
18 Correct?
19 A. Yes, it is.
20 Q. Do you see line 9?
21 A. I see line 9.
22 Q. It's titled "Opioid-Related
23 Percentage of Charges."
24 A. Yes, it is.
25 Q. And it lists percentages for

1 each year from 2006 to 2017?
2 A. Yes, it does.
3 Q. Okay. And this lists as its
4 cite, based on metric analysis in the Cutler
5 report, "see Table 3.4 sub 3."
6 Do you see that?
7 A. Yes, I see that.
8 Q. Did you take the percentages
9 from that cited table that had been
10 calculated by Professor Cutler and
11 incorporate them into your line 9 here, or
12 did you do something else to those
13 percentages?
14 A. I have to answer this in the
15 same way I would answer the questions about
16 your previous three tables. It's based on
17 the analysis in the Cutler report, and in
18 order to reconstruct these numbers, I would
19 need to refresh myself about what David's
20 report contained.
21 Q. Did you do any independent work
22 to arrive at the figures that you list here
23 as, quote, "opioid-related percentage of
24 charges"?
25 MR. SOBOL: Objection. Asked

1 and answered.

2 THE WITNESS: Well, I don't

3 really have anything to add to what I

4 answered, you know, 30 seconds ago.

5 It's based on Cutler's report, and I'd

6 need to see that in order to

7 reconstruct how -- where these numbers

8 came from.

9 QUESTIONS BY MR. KEYES:

10 Q. Would you turn to

11 Appendix 4.C-5.1?

12 A. Okay. I'm there.

13 Q. It's titled "Cuyahoga Court of

14 Common Pleas Damages"?

15 A. Yes, it is.

16 Q. If you turn to line, it says,

17 "Opioid-Related Percentage of Adult Charges."

18 Do you see that?

19 A. Yes.

20 Q. And it lists percentages for

21 each year from 2006 to 2017 --

22 A. Yes, it does.

23 Q. -- correct?

24 And it says that this is "based

25 on metric analysis in the Cutler report, see

1 Table 3.4 sub 6," correct?

2 MR. SOBOL: Is there a

3 footnote?

4 You said, "it says." Was there

5 a footnote, or did the table say that?

6 MR. KEYES: The footnote 10

7 says, "Based on metric analysis in the

8 Cutler report, see Table 3.4 sub 6."

9 QUESTIONS BY MR. KEYES:

10 Q. Do you see that?

11 A. I see that.

12 Q. Okay. Did you take the

13 percentages that Professor Cutler listed in

14 that reference table and incorporate them

15 into your line 10, or did you do something

16 additional to those percentages before you

17 included them?

18 A. Well, I have to answer this

19 question in the same way I've answered the

20 question about the previous three tables.

21 The note notes that this is

22 based on the metric analysis conducted in the

23 Cutler report, and to refresh myself about

24 what was done there and where these -- and

25 how to reconstruct these, I'd need to be able

1 to remind myself what David did in

2 Table 3.4.6.

3 Q. Did you do any independent work

4 to arrive at the figures that you list here

5 as, quote, "Opioid-Related Percentage of

6 Adult Charges"?

7 MR. SOBOL: Objection. Asked

8 and answered.

9 THE WITNESS: Well, I don't

10 really have anything to add to my

11 previous answer, that this is based on

12 analysis that David did, and I'd need

13 to remind myself about what that

14 analysis was and what was contained in

15 the table in order to tell you where

16 these numbers came from.

17 QUESTIONS BY MR. KEYES:

18 Q. Would you turn to

19 Appendix 4.C-6.1?

20 A. I'm there.

21 Q. Do you see line 9 says,

22 "Opioid-Related Percentage of Juvenile

23 Cases"?

24 A. I see that yes.

25 Q. And it lists a percentage for

1 each year from 2006 to 2017?

2 A. Yes, it does.

3 Q. And it says in a footnote,

4 "Based on metric analysis in the Cutler

5 report, see Table 3.7 sub 1."

6 A. I see that, too.

7 Q. Okay. Did you take the

8 percentages that Professor Cutler had

9 reported in the reference table and include

10 them here on your line 9, or did you do

11 something else to those percentages before

12 you included them here?

13 A. I knew you were going to ask

14 that. The note explains that this is based

15 on the analysis in the Cutler report, and I

16 have to answer the same way I've answered

17 about the previous four tables you've asked

18 about.

19 In order to reconstruct these

20 numbers, I'd need to remind myself about what

21 David did in the table referenced here.

22 Q. Did you do any independent work

23 to arrive at the percentages you list here

24 as, quote, "Opioid-Related Percentage of

25 Juvenile Cases"?

1 MR. SOBOL: Objection. Asked
2 and answered.
3 THE WITNESS: I don't have
4 anything to add to my previous answer
5 to this. It's based on the Cutler
6 analysis, and I'd need to see that
7 again in order to remind myself about
8 how it was done.
9 QUESTIONS BY MR. KEYES:
10 Q. Would you turn to
11 Appendix 4.C-7.1?
12 A. Okay. I'm there.
13 Q. It's titled "Cuyahoga Sheriff's
14 Office Damages"?
15 A. I see that.
16 Q. Would you turn to line 10,
17 "Opioid-Related Percentage of Charges"?
18 A. I see that.
19 Q. Lists a percentage for each
20 year from 2006 to 2017?
21 A. I see that.
22 Q. It has a footnote that says,
23 "Based on metric analysis in the Cutler
24 report, see Table 3.4 sub 3"?
25 A. I see that, too.

1 Q. Did you take the percentages
2 that Professor Cutler arrived at and reported
3 in the reference table and include them here,
4 or did you do anything to those percentages
5 before you listed them here?
6 Same answer?
7 A. Well, I have to answer this in
8 the same way I've answered about the previous
9 five tables you've asked about now.
10 This is based on analysis that
11 David did, and I need to refresh myself about
12 that report in order to see where these
13 numbers came from.
14 Q. Did you do any independent work
15 to arrive at the figures you list here on
16 line 10 as, quote, "Opioid-Related Percentage
17 of Charges"?
18 MR. SOBOL: Objection. Asked
19 and answered.
20 THE WITNESS: I don't really
21 have anything to add to my previous
22 answer to this question. It's based
23 on the analysis in the Cutler report,
24 and I'd need to take another look at
25 that in order to determine where these

1 numbers came from.
2 QUESTIONS BY MR. KEYES:
3 Q. Would you turn to
4 Appendix 4.C-8.1?
5 A. Okay. I'm there.
6 Q. This is Cuyahoga County Jail
7 Damages, correct?
8 A. I see that.
9 Q. Line 9 reports, "Opioid-Related
10 Percentage of Adult Charges"?
11 A. I see that.
12 Q. And it lists a percentage for
13 each year from 2006 to 2017?
14 A. Yes, it does.
15 Q. And it has a footnote that
16 says, "Based on metric analysis in the Cutler
17 report, see Table 3.4 sub 6"?
18 A. I see that, too.
19 Q. Okay. Did you simply take the
20 percentages that Professor Cutler had arrived
21 at and reported in the reference table and
22 include them here on line 9, or did you do
23 something to those percentages before you
24 listed them here?
25 A. Well, I have to give the same

1 answer to this question as to the previous
2 six tables you've asked about.
3 The note indicates it's based
4 on the metric analysis in the Cutler report,
5 and in order to determine the source of these
6 numbers, I'd need to go back and remind
7 myself about what David's Table 3.4.6 did.
8 Q. Did you do any independent work
9 to arrive at the figures that you list here
10 on line 9 as, quote, "Opioid-Related
11 Percentage of Adult Charges"?
12 MR. SOBOL: Objection. Asked
13 and answered.
14 THE WITNESS: Well, I don't
15 have anything to add to my previous
16 answer on this.
17 They're based on the analysis
18 in the Cutler report, and I'd need to
19 go back and see what was done there to
20 remind myself how these numbers were
21 constructed.
22 QUESTIONS BY MR. KEYES:
23 Q. Would you turn to
24 Appendix 4.C-9.1?
25 Are you there?

1 A. I'm there, yes.

2 Q. This is titled, "Cuyahoga

3 Office of Medical Examiner Damages."

4 Correct?

5 A. I see that.

6 Q. Line 9 says, "Opioid-Related

7 Percentage of Autopsies"?

8 A. I see that.

9 Q. It lists a percentage for each

10 year from 2006 to 2017?

11 A. Yes, it does.

12 Q. And it has a note that says,

13 "Based on metric analysis in the Cutler

14 report, see Table 3.8 sub 1"?

15 A. I see that.

16 Q. Did you simply take the

17 percentages that Professor Cutler arrived at

18 and reported in the reference table and

19 include them here on line 9, or did you do

20 something to those percentages?

21 A. Well, I have to give the same

22 answer here that I've given to a similar

23 question in the previous seven tables, which

24 is that as the note indicates, it's based on

25 the analysis in the Cutler report. And in

1 order to remind myself about the derivation

2 of these numbers, I would need to take

3 another look at Table 3.8.1.

4 Q. Did you do any independent work

5 to arrive at the figures that are listed on

6 line 9 as, quote, "Opioid-Related Percentage

7 of Autopsies"?

8 MR. SOBOL: Objection. Asked

9 and answered.

10 THE WITNESS: I don't really

11 have anything to add to my previous

12 answer to this question.

13 These numbers are based on the

14 analysis in the Cutler report, and I'd

15 need to remind myself about that

16 before I could give you a precise

17 answer about where these numbers came

18 from.

19 QUESTIONS BY MR. KEYES:

20 Q. Now, if I go through the same

21 exercise with your appendices that are about

22 affected divisions for Summit County as

23 opposed to Cuyahoga County, will your answers

24 be the same?

25 MR. SOBOL: Objection.

1 Which?

2 QUESTIONS BY MR. KEYES:

3 Q. That every time you list an

4 opioid-related percentage of something, where

5 it lists in a footnote that it's based on the

6 metric analysis in the Cutler report, see

7 table such-and-such in the Cutler report,

8 you're going to tell me you can't tell me

9 whether you just took Professor Cutler's

10 numbers or whether you did something to them

11 before you included them in your appendix?

12 MR. SOBOL: Objection.

13 QUESTIONS BY MR. KEYES:

14 Q. Is it fair to say you're going

15 to give me the same answer for each one of

16 those?

17 MR. SOBOL: Objection.

18 Answer it, if you can.

19 THE WITNESS: It's a little

20 hard to anticipate how I would answer

21 questions that haven't been asked yet.

22 But there's -- I see a pattern

23 here in what I'm able to tell you

24 about -- this was all Cuyahoga? Yeah,

25 right.

1 You'll have to make an

2 inference, if you would like.

3 QUESTIONS BY MR. KEYES:

4 Q. So in the appendices we've

5 reviewed so far for Cuyahoga County, can you

6 tell me anything about the opioid-related

7 percentage of services that you listed beyond

8 the fact that it's somehow based on what

9 Professor Cutler did?

10 MR. SOBOL: Objection.

11 Is that a yes or a no question?

12 MR. KEYES: Yeah.

13 THE WITNESS: Would you mind

14 reading it back to me? I'm sorry.

15 QUESTIONS BY MR. KEYES:

16 Q. Sure.

17 We've reviewed a series of

18 appendices for the different affected

19 divisions for Cuyahoga County.

20 Can you tell me anything about

21 the, quote, "Opioid-Related Percentage of

22 Services" that you listed in the appendix

23 beyond the fact that it's somehow based on

24 what Professor Cutler did?

25 MR. SOBOL: Objection. Form.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. KEYES:

3 Q. What can you tell me?

4 A. Well, I can tell you a number

5 of things.

6 Which table would you like me

7 to talk about?

8 Q. Well, let's go back to the

9 first one. There's go back to

10 Appendix 4.C-1.1.

11 Are you there?

12 A. I'm -- yes, I'm at 4.C-4.1

13 {sic}, yes.

14 Q. Okay. Line 2 says,

15 "Opioid-Related Percentage of Services."

16 A. Wait a second. That's not

17 line 2 here. I'm -- 4.C-4.1? Or 1 -- I'm

18 sorry.

19 Q. No. 4.C-1.1.

20 Do you have that in front of

21 you?

22 A. I do, yeah.

23 Q. Okay. And line 2 says,

24 "Opioid-Related Percentage of Services."

25 Correct?

1 A. Yes, it does.

2 Q. Okay. Can you tell me anything

3 about how that was arrived at, other than it

4 is somehow based on what Professor Cutler

5 did?

6 MR. SOBOL: And without putting

7 Professor Cutler's report in front of

8 him, correct? Correct?

9 MR. KEYES: Correct.

10 THE WITNESS: Well, I can tell

11 you some things about this.

12 I understand what the task was

13 that Professor Cutler undertook, which

14 was to determine a percent of the

15 ADAMHS -- this is ADAMHS Board? --

16 yeah, the ADAMHS Board activities that

17 were attributable to opioids.

18 And that involved a two-step

19 process: determining how much of

20 those services were drug-related and

21 then how much of the drug-related were

22 opioid-related.

23 QUESTIONS BY MR. KEYES:

24 Q. And did you do anything

25 yourself beyond take the percentages from

1 Professor Cutler?

2 A. Well, this sounds like the

3 first set of questions you asked. And what I

4 can tell you, based on note 2 here, is that

5 this is based on the metrics in Cutler's

6 report. And in order to be more specific

7 about that, I'd have to tell you -- I'd have

8 to take a look at what David did and remind

9 myself.

10 Q. Would you turn to

11 Appendix 4.D-1.1?

12 Are you there?

13 A. Yes.

14 Q. This says the "Summit ADM Board

15 Damages"?

16 A. Yes.

17 Q. Line 2 says, "Opioid-Related

18 Percentage of Services"?

19 A. I see that.

20 Q. It has a percentage for each

21 year from 2006 to 2017?

22 A. Yes, it does.

23 Q. And it, like every other chart,

24 says, "based on metric analysis in the Cutler

25 report."

1 This time it references Cutler

2 report Table 3.5 sub 6?

3 A. Yeah, I see that.

4 MR. SOBOL: Which other chart?

5 Objection to the form. You

6 said "like every other chart."

7 Which other chart?

8 MR. KEYES: Like every other

9 chart we've reviewed in the deposition

10 today.

11 QUESTIONS BY MR. KEYES:

12 Q. Did you do any independent work

13 to arrive at the opioid-related percentage of

14 services that you list on line 2?

15 MR. SOBOL: Objection.

16 THE WITNESS: Well, my answer

17 here is going to be the same as it was

18 for Cuyahoga in this case: that as

19 the note indicates, it's based on the

20 metric analysis in the Cutler report,

21 and in order to determine where these

22 numbers came from more precisely, I'd

23 need to be able to remind myself about

24 what that -- what happened in that

25 table from David's report.

1 QUESTIONS BY MR. KEYES:

2 Q. Would you turn to

3 Appendix 4.D-2.1?

4 A. Okay. I'm there.

5 Q. Do you see line 9 says,

6 "Opioid-Related Percentage of Custodies"?

7 A. I see that, yes.

8 Q. And it lists a percentage for

9 each year from 2006 to 2017?

10 A. Yes, it does.

11 Q. And it has a footnote that also

12 says, "Based on metric analysis in the Cutler

13 report," and it references Cutler report

14 Table 3.6 sub 2?

15 A. I see that, yes.

16 Q. Did you do any independent work

17 to arrive at the figures listed here on

18 line 9 as, quote, "Opioid-Related Percentage

19 of Custodies"?

20 A. I have to answer this in the

21 same way that I've answered this series of

22 questions about other appendix tables. And

23 what I can tell on the basis of note 9, which

24 I knew, is that it's based on the analysis in

25 the Cutler report.

1 In order to figure out more

2 precisely what these percentages correspond

3 to, I'd need to go back and see -- remind

4 myself about what happened in Cutler 3.6.2.

5 Q. Would you turn to

6 Appendix 4.D-3.1?

7 A. Okay. I'm there.

8 Q. Are you there?

9 A. I'm there.

10 Q. This is titled "Summit

11 Prosecutor Damages."

12 Correct?

13 A. I see that, yes.

14 Q. Line 10 says, "Opioid-Related

15 Percentage of Crimes"?

16 A. I see that.

17 Q. It lists a percentage for each

18 year from 2006 to 2017?

19 A. Yes, I see that.

20 Q. And it has a note that says,

21 "This is based on the metric analysis in the

22 Cutler report, see Table 3.4 sub 9."

23 A. I see that, too.

24 Q. Did you do any independent work

25 to arrive at the figures that you list here

1 on line 10 as being, quote, "Opioid-Related

2 Percentage of Crimes"?

3 A. I have to answer this in the

4 same way I've answered the series of previous

5 questions about different appendix tables,

6 which is that as the note indicates, it's

7 based on the metric analysis in the Cutler

8 report. And in order to determine more

9 precisely where these figures came from, I

10 would need to go back and remind myself about

11 what happened in Table 3.4.9.

12 Q. Could you turn to

13 Appendix 4.D-4.1?

14 A. Okay. I'm there.

15 Q. Okay. Line -- this is titled

16 "Summit Court of Common Pleas Damages"?

17 A. That I see.

18 Q. Line 10 says, "Opioid-Related

19 Percentage of Crimes"?

20 A. I see that.

21 Q. You going to tell me the same

22 thing about how those percentages were

23 arrived at?

24 MR. SOBOL: Objection.

25 THE WITNESS: Well, the table

1 is constructed in the same way. I'm

2 not sure what you're asking.

3 QUESTIONS BY MR. KEYES:

4 Q. I'm asking, is this also

5 based -- somehow based on what Professor

6 Cutler did?

7 A. Well, as the note says, yes,

8 this is based on the metric analysis in the

9 Cutler report.

10 Q. Did you do any independent work

11 to arrive at the figures listed on line 10

12 as, quote, "Opioid-Related Percentage of

13 Crimes"?

14 A. Well, I have to answer this in

15 the same way that I've answered questions

16 about a series of other appendices that we've

17 talked about this morning. And the note

18 indicates it's based on the metric analysis

19 in the Cutler report, and in order to

20 determine more precisely where these

21 particular percentages came from, I'd need to

22 go back and remind myself what happened in

23 Table 3.4.9.

24 Q. Okay. Would you turn to

25 Appendix 4.D-5.1?

1 A. Okay. I'm there.

2 Q. This is Summit Juvenile Court

3 Damages?

4 A. I see that.

5 Q. Do you see line 9 says,

6 "Opioid-Related Percentage of Juvenile

7 Cases"?

8 A. I see that.

9 Q. And it again lists a percentage

10 for each year from 2006 to 2017?

11 A. I see that.

12 Q. And it also, like every other

13 chart that we've reviewed, says, "Based on

14 metric analysis in the Cutler report"?

15 A. I see.

16 Q. And this time it references

17 Table 3.7 sub 2?

18 A. I see that.

19 Q. Did you do any independent work

20 to arrive at the percentages you list here on

21 line 9 as, quote, "Opioid-Related Percentage

22 of Juveniles Cases"?

23 A. Well, I have to answer this in

24 the same way that I've answered questions

25 about a series of other tables you've asked

1 about this morning. And as the note

2 indicates, it's based on the metrics in the

3 Cutler report, and in order to determine more

4 precisely where these numbers came from, I'd

5 need to remind myself about what happened in

6 Cutler 3.7.2.

7 Q. Would you turn to

8 Appendix 4.D-6.1?

9 A. Okay. I'm there.

10 Q. This is Summit Sheriff's Office

11 Damages, correct?

12 A. Yes.

13 Q. Line 10 says, "Opioid-Related

14 Percentage of Crimes"?

15 A. I see that.

16 Q. Lists a percentage for each

17 year from 2006 to 2017?

18 A. I see that.

19 Q. And it, like every other chart,

20 references that it's based on the metric

21 analysis in the Cutler report, and it says,

22 "See Table 3.4 sub 9 in the Cutler report,"

23 correct?

24 A. Yes, it does.

25 Q. Did you do any independent work

1 to arrive at the figures listed on line 10

2 as, quote, "Opioid-Related Percentage of

3 Crimes"?

4 A. Well, I have to answer this in

5 the same way I've answered questions about a

6 series of other tables we've talked about

7 this morning.

8 As the note indicates, my work

9 is based on the metrics in the Cutler report,

10 and in order to determine more precisely

11 where these percentages came from, I'd need

12 to be able to review what happened in Cutler

13 3.4.9.

14 Q. Would you turn to

15 Appendix 4.D-7.1?

16 A. Okay. I'm there.

17 Q. Do you see that it's titled

18 "Summit County Jail Damages"?

19 A. I see that.

20 Q. And you have line 9,

21 "Opioid-Related Percentage of Prisoners"?

22 A. I see that.

23 Q. It lists a percentage for each

24 year from 2006 to 2017?

25 A. I see that, too.

1 Q. And it also references in

2 footnote 9 that it's based on the metric

3 analysis in the Cutler report, and it says,

4 "see Table 3.4 sub 12"?

5 A. I see that.

6 Q. Okay. Did you do any

7 independent work to arrive at the percentages

8 that are listed on line 9 as, quote,

9 "Opioid-Related Percentage of Prisoners"?

10 MR. SOBOL: Objection.

11 THE WITNESS: Well, I have to

12 answer this in the same way that I've

13 answered questions about previous

14 tables.

15 The note indicates that line 9

16 is based on the metric analysis in the

17 Cutler report and makes a reference to

18 a particular table there. And in

19 order for me to reconstruct where

20 these percentages came from, I'd need

21 to go back and take a look at the

22 table referred to in note 9.

23 QUESTIONS BY MR. KEYES:

24 Q. Please turn to

25 Appendix 4.D-8.1.

1 A. Okay.

2 Q. This is titled "Summit

3 Alternative Corrections Damages"?

4 A. I see that.

5 Q. Line 5 says, "Opioid-Related

6 Percentage of Prisoners"?

7 A. I see that.

8 Q. It has a percentage for each

9 year from 2006 to 2017?

10 A. Yes, it does.

11 Q. And it also has a footnote that

12 references being based on the metric analysis

13 in the Cutler report: "See Table 3.4 sub 12

14 of the Cutler report"?

15 A. I see that, too.

16 Q. Did you do any independent work

17 to arrive at the percentages that are listed

18 on line 5 as, quote, "Opioid-Related

19 Percentage of Prisoners"?

20 MR. SOBOL: Objection.

21 THE WITNESS: Well, I have to

22 answer that in the same way that I've

23 answered questions about a series of

24 other tables we've talked about this

25 morning.

1 And as the note says, these

2 percentages are based on the metric

3 analysis in the Cutler report, and in

4 order to figure out more precisely

5 where these numbers come from, I'd

6 need to be able to remind myself about

7 what happened in Table 3.4.12.

8 QUESTIONS BY MR. KEYES:

9 Q. Could you turn to

10 Appendix 4.D-9.1?

11 A. I'm there.

12 Q. This is titled "Summit Adult

13 Probation Damages"?

14 A. I see that.

15 Q. Line 10 says, "Opioid-Related

16 Percentage of Crimes"?

17 A. I see that.

18 Q. It lists a percentage for each

19 year from 2006 to 2017?

20 A. Yes, it does.

21 Q. And it, like every other chart,

22 has a footnote that says, "Based on metric

23 analysis in the Cutler report. See Table 3.4

24 sub 9 of the Cutler report," correct?

25 A. I see that.

1 Q. Did you do any independent work

2 to arrive at the figures that you list here

3 as being, quote, "the opioid-related

4 percentage of crimes"?

5 A. Well, I have to answer this in

6 the same way I've answered questions about a

7 series of other tables we've talked about

8 this morning.

9 And as the note indicates, it's

10 based on the metric analysis in the Cutler

11 report and references a particular table.

12 And for me to be able to reconstruct these

13 percentages, I'd need to go back and remind

14 myself what happened in Table 3.4.9.

15 Q. Would you turn to

16 Appendix 4.D-10.1?

17 A. Okay.

18 Q. This is titled "Summit Medical

19 Examiner Damages."

20 Correct?

21 A. I see that.

22 Q. Line 9 says, "Opioid-Related

23 Percentage Autopsies"?

24 A. I see that, too.

25 Q. It lists a percentage for each

1 year from 2006 to 2017?

2 A. Yes, it does.

3 Q. And it references in a footnote

4 that it's "Based on the metric analysis in

5 the Cutler report. See Table 3.8 sub 2 of

6 the Cutler report."

7 Correct?

8 A. I see that.

9 Q. Did you do any independent work

10 to arrive at the percentages that you list on

11 line 9 as being "Opioid-Related Percentage of

12 Autopsies"?

13 MR. SOBOL: Objection.

14 THE WITNESS: Well, I have to

15 answer this in the same way I've

16 answered questions about a series of

17 other tables we've talked about this

18 morning.

19 And as the note indicates, the

20 percentages here are based on the

21 analysis in a particular place in the

22 Cutler report, and in order to

23 reconstruct my numbers, I'd need to

24 remind myself about what happened in

25 Cutler 3.8.2.

1 QUESTIONS BY MR. KEYES:

2 Q. Earlier today you said you

3 talked to Ms. Kaminski at Compass Lexecon to

4 remind you about certain things you had done

5 to calculate crime statistics or the

6 prevalence of OUD.

7 MR. SOBOL: Objection.

8 QUESTIONS BY MR. KEYES:

9 Q. Would you also talk to

10 Ms. Kaminski to remind you how you arrived at

11 these various percentages that we've covered

12 in these various charts?

13 MR. SOBOL: Objection. Form.

14 Asked and answered. Compound.

15 THE WITNESS: There was a verb

16 in there I didn't hear.

17 Was it could, would or did?

18 QUESTIONS BY MR. KEYES:

19 Q. Would.

20 A. Would I talk to her?

21 MR. SOBOL: Why don't we get a

22 fresh question.

23 QUESTIONS BY MR. KEYES:

24 Q. Well, would you talk to

25 Ms. Kaminski to figure out how you arrived at

1 the percentages that you list here on the

2 lines that we've just spent the last

3 30 minutes covering?

4 MR. SOBOL: Objection.

5 THE WITNESS: Would I? That's

6 conditional.

7 QUESTIONS BY MR. KEYES:

8 Q. If you wanted to know the

9 answer, in that condition, would you go to

10 Ms. Kaminski?

11 MR. SOBOL: Objection.

12 THE WITNESS: Okay. So what's

13 the question?

14 QUESTIONS BY MR. KEYES:

15 Q. If you wanted to know where

16 these percentages came from and what you did

17 with these percentages, would you go to

18 Ms. Kaminski to remind you what you did?

19 MR. SOBOL: Objection.

20 THE WITNESS: No.

21 MR. SOBOL: Which percentages?

22 MR. KEYES: All of the

23 percentages we've talked about this

24 morning.

25 MR. SOBOL: I don't know which

1 those are. From Cutler or from

2 McGuire?

3 QUESTIONS BY MR. KEYES:

4 Q. You can answer.

5 MR. SOBOL: Well, I don't

6 understand the question.

7 MR. KEYES: Then you can

8 object. You did. Now he can answer.

9 MR. SOBOL: If he can.

10 THE WITNESS: Well, I have to

11 say it depends.

12 QUESTIONS BY MR. KEYES:

13 Q. On what?

14 A. On what exactly you're talking

15 about in terms of what I'm refreshing myself

16 about.

17 Q. Well, I've just gone through a

18 bunch of charts, some for Cuyahoga County,

19 some for Summit County, and every single

20 chart has a line that says "opioid-related

21 percentage of" something.

22 And every single time there's a

23 footnote, and every single time that footnote

24 says it's based on Professor Cutler's

25 metrics, and every single time it references

1 a chart or a table from Professor Cutler.

2 And every single time you gave

3 me your answer: I'll have to give the same

4 answer that I gave the last time, which is,

5 I'd have to go look at Professor Cutler's

6 report to figure out where these percentages

7 came from.

8 And every time I asked you,

9 "Did you do any independent work?" you said,

10 "I'd have to give you the same answer: 'I

11 don't know.'"

12 A. I'm laughing with you.

13 Q. Okay. So you could go look at

14 Professor Cutler's report, but I'm asking you

15 questions about your report.

16 A. All right.

17 Q. And your report says nothing

18 other than "I am doing something based on

19 Cutler's metrics."

20 My question is: If you want to

21 figure out what you did for this report to

22 get these percentages, who would you go to to

23 get that answer?

24 MR. SOBOL: Objection.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Would it be Ms. Kaminski or

3 someone else at Compass Lexecon?

4 MR. SOBOL: Objection.

5 Is there some part of the

6 question that you'd like the witness

7 to agree with your speech about, or do

8 you want him to answer your questions

9 that you put?

10 THE WITNESS: Well, it depends

11 on what the particular percentage is.

12 QUESTIONS BY MR. KEYES:

13 Q. So would you go to Ms. Kaminski

14 for some percentages but someone else at

15 Compass Lexecon for other percentages?

16 MR. SOBOL: Objection.

17 If you can answer it, fine. I

18 don't know what he's talking about.

19 If you can figure it out --

20 MR. KEYES: Enough of the

21 speaking objections. If he doesn't

22 know what I'm talking about, he's

23 perfectly capable of saying that.

24 QUESTIONS BY MR. KEYES:

25 Q. I need your testimony, not what

1 you're coached to say.

2 MR. SOBOL: Well, you can call

3 me Coach Belichick, and I would be

4 flattered, but that's not what I'm

5 doing.

6 I'm just trying to figure out

7 what it is that you're asking and

8 making sure that the witness

9 understands it, too.

10 If you don't want to make

11 yourself better understood, then go

12 for it, but then we'll end up with a

13 fairly inadequate transcript on your

14 part.

15 Do you understand the question

16 before you, Mr. Witness?

17 THE WITNESS: I think I can be

18 somewhat responsive, which is to say

19 in many cases this is something I

20 would be capable of doing myself.

21 And I might need to ask some --

22 at Compass Lex for some clarification,

23 but it really depends on what

24 you're -- more specifically you're

25 talking about.

1 QUESTIONS BY MR. KEYES:

2 Q. Last week you described your

3 approach for identifying so-called affected

4 costs?

5 A. Yes.

6 Q. And you attempted to articulate

7 your approach for identifying affected costs?

8 A. Yes.

9 Q. And a number of times you cited

10 the police as an example of how you would go

11 about identifying an affected cost,

12 identifying whether it was fixed or variable,

13 identifying if it was overhead.

14 Do you recall that?

15 A. I do, yes.

16 Q. Okay. So can you identify for

17 me what the responsibilities of the Cuyahoga

18 County Police Department are?

19 A. In total? All the

20 responsibilities of the Cuyahoga County

21 Police Department?

22 Q. Well, your general

23 understanding of the Cuyahoga County Police

24 Department's responsibilities.

25 A. Okay. Well, my understanding

1 is their primary responsibility is public

2 safety, which involves a number of

3 safety-related activities.

4 They're also responsible for

5 traffic control, if I could use kind of a

6 layperson's word about that. And some

7 community education, community relations.

8 Q. Did you talk to anyone who

9 works for the Cuyahoga County Police

10 Department?

11 A. I don't recall.

12 Q. Did you read the deposition

13 testimony of anyone who works for the

14 Cuyahoga County Police Department?

15 A. I may have. I don't recall.

16 Q. Do you have an understanding as

17 to what the responsibilities of the Summit

18 County Police Department are?

19 A. Isn't it sheriff?

20 Q. Is there a police department in

21 Summit County?

22 A. I don't remember the title. I

23 thought it might have been sheriff, but...

24 Q. Okay. So for Summit County you

25 think there's a sheriff?

1 A. I'm -- I guess I'm asking, but
 2 I know I can't do that, so...
 3 I guess if I can -- see if I
 4 understand where the question is. The
 5 question is, did I speak to someone in Summit
 6 County law enforcement?
 7 MR. SOBOL: Objection.
 8 QUESTIONS BY MR. KEYES:
 9 Q. No.
 10 My question was: Did you
 11 speak -- do you have an understanding of what
 12 the responsibilities are of a Summit County
 13 Police Department?
 14 A. Responsibilities. The
 15 responsibilities would be very similar.
 16 Q. Did you talk to anyone who
 17 works for a Summit County Police Department?
 18 A. I don't recall.
 19 Q. Did you read the deposition
 20 testimony of anyone who works for a Summit
 21 County Police Department?
 22 A. I may have. I don't remember.
 23 Q. Okay. And does Summit County
 24 have a police department?
 25 A. They have a -- I don't remember

1 whether it's called sheriff or police
 2 department, but they have a function that
 3 would have gone under one of those two names.
 4 Q. Does Cuyahoga County have a
 5 police department?
 6 A. It's the same.
 7 Q. Okay. And do you have an
 8 understanding as to what the differences are
 9 between a police department and a sheriff's
 10 department?
 11 A. Not really, no, I don't
 12 understand in terms of the -- whatever the,
 13 you know, the connotations of the
 14 jurisdiction each of those departments would
 15 have.
 16 Q. Do you have an understanding as
 17 to whether there are differences between a
 18 police department and a sheriff's
 19 department --
 20 MR. SOBOL: Objection to form.
 21 QUESTIONS BY MR. KEYES:
 22 Q. -- in Cuyahoga County?
 23 A. As I said, I don't have an
 24 appreciation of the -- whatever the
 25 differences are between those two forms of

1 law enforcement.
 2 Q. How about Summit County?
 3 MR. SOBOL: Objection.
 4 THE WITNESS: I'm not sure what
 5 you're asking.
 6 QUESTIONS BY MR. KEYES:
 7 Q. Do you have an understanding as
 8 to whether there are differences between a
 9 police department and a sheriff's department
 10 in Summit County?
 11 A. Well, I would have to give the
 12 same answer I gave for Cuyahoga. I don't
 13 have an appreciation of the differences in,
 14 you know, authority of the police and
 15 sheriff's department.
 16 Q. Okay. You identified the
 17 Summit County ADM Board as an affected
 18 division, to use your terminology, correct?
 19 A. Yes, that's correct.
 20 Q. Okay. So for the Summit County
 21 ADM Board, what was the opportunity cost of
 22 the opioid-related expenditures that you
 23 quantified?
 24 MR. SOBOL: Objection.
 25 Do you want him to refer to his

1 report, or is this a memory test?
 2 MR. KEYES: I'm asking him to
 3 identify what the opportunity costs
 4 was.
 5 THE WITNESS: The opportunity
 6 costs in economics is measured in
 7 dollars, and it's in my report.
 8 QUESTIONS BY MR. KEYES:
 9 Q. What activity or activities did
 10 the Summit County ADM Board forego because it
 11 spent those dollars on opioid-related
 12 activities?
 13 MR. SOBOL: Objection. Asked
 14 and answered.
 15 THE WITNESS: This is something
 16 that we talked about last time in some
 17 detail, and the important thing that I
 18 need to say about this from the
 19 standpoint of an economist is the way
 20 opportunity cost works is that it's
 21 not necessary to identify the precise
 22 nature of the activities that were not
 23 undertaken.
 24 And if you remember last time,
 25 I gave you the example of the

1 household that had an accident with
 2 their car and it cost them \$75. The
 3 opportunity cost of those funds is
 4 \$75. That's the economic approach to
 5 opportunity cost.
 6 It's not necessary for me as an
 7 economist to say, well, they didn't go
 8 out to dinner one night or they, you
 9 know, didn't do whatever. The
 10 opportunity cost is \$75.
 11 QUESTIONS BY MR. KEYES:
 12 Q. Did you identify whether Summit
 13 County ADM Board suffered any harm because it
 14 forewent an opportunity because it was
 15 spending dollars on opioid-related
 16 activities?
 17 MR. SOBOL: Objection.
 18 THE WITNESS: What do you mean
 19 by the board suffering harm?
 20 QUESTIONS BY MR. KEYES:
 21 Q. Well, I don't know that I can
 22 be more specific.
 23 In your work, you identified
 24 the dollars that you said were devoted to
 25 opioid-related activities. You said that had

1 an opportunity cost.
 2 A. Yes.
 3 Q. I asked you what the ADM Board
 4 forewent, something they didn't do, because
 5 they were spending those dollars on
 6 opioid-related activities.
 7 You said you don't need to look
 8 at that.
 9 I'm asking: Did you look at
 10 whether the Summit County ADM Board suffered
 11 or incurred any harm because it forewent
 12 another activity because it was spending
 13 dollars on the opioid problem?
 14 MR. SOBOL: Okay. And
 15 objection.
 16 There was a speech that I
 17 assume that the questioner does not
 18 expect you to be buying into, but
 19 there was a question at the end of it
 20 which I assume the questioner was
 21 asking you to respond to.
 22 THE WITNESS: I'm still a
 23 little confused about what you mean by
 24 the board being harmed.
 25 The board is a board, which

1 are -- which consists of people on the
 2 board. That's what I understand the
 3 board to be.
 4 Are you asking how they would
 5 be harmed?
 6 QUESTIONS BY MR. KEYES:
 7 Q. No.
 8 I'm asking how the Summit
 9 County ADM Board, as the affected division
 10 you identified --
 11 A. Okay.
 12 Q. -- whether it suffered any harm
 13 because it forewent another activity because
 14 it was spending dollars on opioid-related
 15 services.
 16 MR. SOBOL: Objection.
 17 THE WITNESS: Okay. Well, I am
 18 interpreting your question as an
 19 opportunity cost question, which is to
 20 say something had been foregone
 21 because of the funds to go into
 22 opioids, and there's a dollar metric
 23 of that.
 24 And then I'm a little bit lost
 25 in the question. So, sorry.

1 QUESTIONS BY MR. KEYES:
 2 Q. But you were talking about
 3 opportunity costs. You've already talked at
 4 length about opportunity costs. I'm asking
 5 about harm.
 6 A. Harm.
 7 Q. Harm.
 8 Did you identify any harm that
 9 the Summit County ADM Board suffered or
 10 incurred --
 11 MR. SOBOL: Objection.
 12 QUESTIONS BY MR. KEYES:
 13 Q. -- because it didn't spend
 14 money on something else because it was
 15 spending those dollars on opioid-related
 16 activities?
 17 MR. SOBOL: Objection. Asked
 18 and answered now.
 19 THE WITNESS: Okay. So I
 20 understand you're not asking about
 21 opportunity costs. I'm not sure then
 22 what harm means in your question.
 23 QUESTIONS BY MR. KEYES:
 24 Q. So you can't -- you don't know
 25 what harm means; that's your testimony?

1 MR. SOBOL: Objection. It's
2 not his testimony.
3 He doesn't know what you mean
4 by it.
5 THE WITNESS: I can't answer
6 until -- if you could just use another
7 example or use another word or help me
8 explain -- help me understand what
9 harm means in the question.
10 QUESTIONS BY MR. KEYES:
11 Q. How about injury? Did the
12 Summit County ADM Board suffer any injury
13 because it spent money on opioid-related
14 activities rather than the thing it gave up?
15 MR. SOBOL: Objection.
16 THE WITNESS: I'm still having
17 a hard time here.
18 Injury is a kind of metaphor.
19 You know, injury, I know what an
20 injury is. I interpret you using that
21 term as a kind of metaphor here, but
22 I'm not sure as a metaphor for what.
23 I'm happy to answer the
24 question. I'm just not sure what the
25 direction is you're trying to get at.

1 QUESTIONS BY MR. KEYES:
2 Q. In 2006 -- that's one of the
3 years covered by your damages report,
4 correct?
5 A. Yes.
6 Q. In 2006, if the Summit County
7 ADM Board did not spend the dollars you
8 quantified on opioid-related work, what would
9 it have spent the money on?
10 MR. SOBOL: Objection.
11 THE WITNESS: This gets back to
12 the discussion of opportunity costs
13 and how, from an economist point of
14 view, to be able to quantify in dollar
15 terms the opportunity costs. It's not
16 necessary for me to know what else
17 they would have done with the money.
18 Just like with the household
19 having to pay the \$75 to fix their
20 car, it's not important in assessing
21 opportunity costs to know whether, you
22 know, the teenager spent it, the mom
23 would have spent it, the dad would
24 have spent it. Those -- I don't need
25 to know those questions. I don't need

1 to know the answers to those
2 questions.
3 QUESTIONS BY MR. KEYES:
4 Q. Separate from whether you need
5 to know, did you ask the question, and did
6 you look into that as part of your work on
7 this case?
8 MR. SOBOL: Objection.
9 THE WITNESS: I looked into
10 what I needed to know in order to
11 identify opportunity costs in a
12 reliable -- a reliable way that's in
13 line with economic practice in this
14 field.
15 QUESTIONS BY MR. KEYES:
16 Q. Did you conduct any factual
17 inquiry to determine what the Summit County
18 ADM Board would have spent the money on in
19 2006 if it had not spent that money on what
20 you quantified as opioid-related work?
21 MR. SOBOL: Objection. Asked
22 and answered.
23 THE WITNESS: It wasn't
24 necessary for me to be able to
25 determine a reliable estimate of

1 opportunity costs for me to know what
2 the alternative -- the money would
3 have been spent on alternatively.
4 Just like in the case of the
5 household, an economist assesses the
6 opportunity cost of spending on
7 something without needing to know what
8 the funds would have been devoted to
9 in the absence of that cost.
10 QUESTIONS BY MR. KEYES:
11 Q. Would your answer be any
12 different if I picked 2007 instead of 2006?
13 MR. SOBOL: Objection.
14 THE WITNESS: I don't see
15 anything that would be different with
16 2007, but your -- are you referring to
17 a series of questions or a particular
18 question?
19 QUESTIONS BY MR. KEYES:
20 Q. I'll ask you a question about
21 2006.
22 A. You asked me a series of
23 questions about 2006.
24 Q. And now I'm saying 2007.
25 MR. SOBOL: Objection then.

1 QUESTIONS BY MR. KEYES:

2 Q. Did you conduct any factual

3 inquiry to determine what the Summit County

4 ADM Board would have spent the money on in

5 2007 if it had not spent that money on what

6 you quantified as opioid-related work?

7 A. Okay. I do have to answer this

8 in the same way that I referred to in the

9 earlier year. In order to develop a reliable

10 estimate of opportunity costs, it's not

11 necessary for an economist to be able to

12 identify what exactly the funds would have

13 been used for. They could have been used

14 for, you know, different purposes.

15 Q. And if I ask the same question

16 using 2008 instead of 2007, would your answer

17 be the same?

18 MR. SOBOL: Objection.

19 THE WITNESS: Okay. The same

20 single question --

21 QUESTIONS BY MR. KEYES:

22 Q. Yes.

23 A. -- you're referring to?

24 My answer would be the same for

25 2008.

1 Q. And would your answer be the

2 same to that question for every year between

3 2006 and 2018?

4 MR. SOBOL: Objection.

5 THE WITNESS: Well, the

6 principles that I articulate in the

7 question are general, and the

8 methodology for opportunity costs and

9 how to assess it and what an economist

10 needs to know would be the same as --

11 across time.

12 QUESTIONS BY MR. KEYES:

13 Q. For any year between 2006 and

14 2018, did you conduct any factual inquiry to

15 determine what the Summit County ADM Board

16 would have spent the money on if it had not

17 spent the money on what you quantified as

18 opioid-related work?

19 MR. SOBOL: Objection. Asked

20 and answered.

21 THE WITNESS: Okay. In order

22 to develop a reliable estimate of

23 opportunity costs, which was what I

24 was trying to do here, it wasn't

25 necessary for me to determine what the

1 funds would have been used for in

2 detail.

3 What's necessary is to know

4 they would have been available to the

5 board to spend on things they thought

6 would be worthwhile.

7 QUESTIONS BY MR. KEYES:

8 Q. For any year between 2006 and

9 2018, did you conduct any factual inquiry to

10 determine what Summit County Children's

11 Services Board would have spent the money on

12 if it had not spent that money on what you

13 quantified as opioid-related work?

14 MR. SOBOL: Objection.

15 THE WITNESS: Well, as in the

16 case of the previous division we spoke

17 about, in order to reliably estimate

18 opportunity costs, which was my

19 objective here, I did what I needed to

20 do to be able to estimate that.

21 What was not necessary for me

22 to do was to identify a hypothetical

23 counterfactual in which the board --

24 sorry, we're at Children's Family

25 Services now -- in which the funds may

1 have been spent differently.

2 And...

3 QUESTIONS BY MR. KEYES:

4 Q. Okay. So you list a number of

5 other affected divisions for Summit County.

6 You list the Summit County Prosecutor, Court

7 of Common Pleas, Juvenile Court, Sheriff's

8 Office, County Jail, Alternative Corrections,

9 Adult Probation and Medical Examiner.

10 Okay?

11 A. That sounds right.

12 Q. So for any of those affected

13 divisions, for any year between 2006 and

14 2018, did you conduct any factual inquiry to

15 determine what that division would have spent

16 the money on if it had not spent the money on

17 what you quantified as opioid-related work?

18 MR. SOBOL: Objection in part.

19 Asked and answered.

20 THE WITNESS: Let me make two

21 comments about this in answer to your

22 question.

23 The first comment is about

24 opportunity costs and the nature of

25 opportunity costs in economics and how

1 an economist studies opportunity
 2 costs. And a good example is a
 3 household which incurs, say, an
 4 unexpected expense of car repair. And
 5 I'll just pick a number of \$75.
 6 If the household had not needed
 7 to spend that money on car repair, the
 8 money would have been available for
 9 other things that the household could
 10 have purchased. And there's a range
 11 of things that obviously they could do
 12 with that money.
 13 What is the opportunity costs
 14 of the \$75 needed for car repair?
 15 It's \$75. That's straightforward.
 16 Not only economic opportunity costs,
 17 but it's also common sense that that
 18 would be the opportunity cost of those
 19 funds.
 20 So that's what I -- that is the
 21 economic principle that I applied in
 22 this case, which was to do what I
 23 needed to do in order to reliably
 24 identify the opportunity costs of the
 25 funds devoted to opioids. That's part

1 one of my answer.
 2 Part two of my answer is that I
 3 did do investigation into the -- into
 4 the existence of opportunity costs in
 5 the form of confirming that, yes,
 6 spending on opioids did divert these
 7 funds from other uses. And it was
 8 part of my investigation and part of
 9 what we talked about last time, that
 10 that confirmatory research was done.
 11 QUESTIONS BY MR. KEYES:
 12 Q. Okay. I asked a yes or no
 13 question. You gave me a long answer.
 14 You said that you "did confirm
 15 that spending on opioids did divert the funds
 16 from other uses."
 17 Okay?
 18 MR. SOBOL: In part he said
 19 that, yes.
 20 QUESTIONS BY MR. KEYES:
 21 Q. So focusing on what you said
 22 you did about confirming that spending on
 23 opioids did divert the funds from other uses,
 24 I want to know for each division what that
 25 other use was, what those dollars would have

1 been spent on specifically if they had not
 2 been spent on opioid-related activities.
 3 MR. SOBOL: Objection.
 4 QUESTIONS BY MR. KEYES:
 5 Q. You tell me what those other
 6 uses are specifically for the Summit County
 7 ADM Board.
 8 MR. SOBOL: Objection. Asked
 9 and answered.
 10 THE WITNESS: Let me clarify
 11 what I just said a minute ago about
 12 confirming -- and I'll just call it
 13 diversion for short.
 14 What I was interested in was
 15 does diversion take place. And
 16 there's a series of references in my
 17 report to some, I think, some news
 18 articles, to some deposition
 19 testimony, to some other written
 20 material, that indicates that, yes,
 21 there is diversion. When funds are
 22 devoted to opioids, other things --
 23 some other things don't get done.
 24 When you asked me to be -- to
 25 turn my attention to the ADAMHS Board,

1 I think is the question you're
 2 asking --
 3 QUESTIONS BY MR. KEYES:
 4 Q. Yes.
 5 A. -- to turn my attention to the
 6 ADAMHS Board in particular, and asked me to
 7 identify the particular services that were
 8 not done because the money was spent on
 9 opioids, it comes back to the answer I gave a
 10 minute ago in the previous question, which
 11 is, in order to identify opportunity costs,
 12 it's sufficient for an economist to measure
 13 the spending on, in this case, opioid-related
 14 activities.
 15 And as long as -- as long as
 16 there are alternative uses for the funds,
 17 that spending on opioid-related activities is
 18 the reliable, it's the economically
 19 principled metric for what opportunity costs
 20 consist of.
 21 Q. For the Summit County
 22 Children's Services Board, can you tell me
 23 what the other use was, what the dollars
 24 would have been spent on specifically if they
 25 had not been spent on opioid-related

1 activities?

2 MR. SOBOL: Objection. Asked

3 and answered.

4 THE WITNESS: Now, this is the

5 same question but for another

6 division --

7 QUESTIONS BY MR. KEYES:

8 Q. Yes.

9 A. -- if I understand it?

10 Well, then the answer is going

11 to be the same.

12 With respect to my interest in

13 diversion, I wanted to know and had confirmed

14 in -- with respect to a series of things that

15 I refer to in my report that, yes, diversion

16 is real. And what I mean by that is that

17 when funds are spent on opioid-related

18 activities, some other things are not done.

19 And when you come to ask me

20 about a particular division, in this case

21 Family Services, then what -- what I did in

22 this case is to identify the opportunity

23 costs of the funds, which is sufficient for

24 an economist to be able to provide a dollar

25 metric of the opportunity cost of the funds.

1 And it's not necessary for me to know

2 precisely what those funds would have been

3 spent on as long as there were alternative

4 use of those funds.

5 That's the economically

6 principled way to go about assessing

7 opportunity costs, and that's what I did.

8 Q. So if I asked you the same

9 question for each of the other affected

10 divisions for Summit County, is your answer

11 the same?

12 MR. SOBOL: Objection.

13 THE WITNESS: My answer would

14 generally be the same, yes.

15 QUESTIONS BY MR. KEYES:

16 Q. Well, for the Summit County

17 prosecutor, will you tell me what the other

18 use was, that is, what the dollars would have

19 been spent on specifically if they had not

20 been spent on opioid-related activities?

21 A. Well, let me just remind you of

22 the opportunity costs principle here, which

23 is, for an economist to be able to provide a

24 reliable, theory-based metric of the

25 opportunity cost of spending on a particular

1 activity, it's not necessary for me to know

2 what particular -- what precise services that

3 those funds would have been devoted to in an

4 alternative world in which the opioid crisis

5 were not here.

6 It's sufficient for me to know

7 that this is what they spent on

8 opioid-related activities, and those funds

9 would have been available for something else.

10 Q. Did you conduct a factual

11 inquiry for any of the Summit County affected

12 divisions to identify the other use, such

13 that you can tell me what the dollars would

14 have been spent on specifically if they had

15 not been spent on opioid-related activities?

16 MR. SOBOL: Objection. Asked

17 and answered.

18 THE WITNESS: Yeah, for each of

19 the Summit County divisions that

20 you're referring to, my objective was

21 to identify the opportunity cost of

22 funds devoted to opioid-related

23 activity.

24 And the economically principled

25 standard way of assessing opportunity

1 costs is to measure the funds devoted

2 to the activity in question, which in

3 this case is opioid-related

4 activities.

5 And so long as there are

6 alternative use of those funds, it's

7 not necessary and it even is just --

8 it's not done to -- it's not necessary

9 to propose a hypothetical world in

10 which something else would have

11 happened.

12 What is sufficient for me is to

13 know that there would have been other

14 uses for the funds of the division,

15 and by devoting them to opioids there

16 was less money available for other

17 things.

18 QUESTIONS BY MR. KEYES:

19 Q. For any year between 2006 and

20 2018, for any of the Cuyahoga County-affected

21 divisions that you've identified, did you

22 conduct any factual inquiry to identify the

23 other use such that you can tell me what the

24 dollars would have been spent on specifically

25 if they had not been spent on opioid-related

1 activities?

2 MR. SOBOL: Objection. Asked

3 and answered.

4 THE WITNESS: The answer for

5 Cuyahoga County would be similar to

6 the answer for Summit County.

7 What I was doing as an

8 economist in this case is to estimate

9 in dollar terms a measure of the

10 opportunity cost of the funds that

11 were devoted to opioid-related

12 activities and applying standard

13 methodology in economics to measure

14 opportunity costs.

15 It's not necessary for an

16 economist to identify specifically the

17 alternative uses of the funds in a

18 hypothetical world in which they had

19 not been spent on opioids. It's --

20 opioid-related activities.

21 It's sufficient for me to say

22 this -- these were the funds devoted

23 to opioid-related activities. They

24 would be available for other uses.

25

1 QUESTIONS BY MR. KEYES:

2 Q. In 2006, did the Summit County

3 ADM Board create and fund any new position

4 because of the opioid problem?

5 A. I'm not sure.

6 Q. How about in 2007?

7 A. I'm not sure.

8 Q. How about any year between 2008

9 and 2018?

10 A. I'm not sure.

11 Q. Did you look into that at all,

12 to see whether in any year the Summit County

13 ADM Board created and funded any new position

14 because of the opioid problem?

15 A. I may have. You know, I was

16 interested in material like this, but I don't

17 remember the details of the Summit ADM Board.

18 Q. Where did you look to answer

19 that question when you were interested in

20 that question?

21 A. In various county documents for

22 both counties.

23 Q. And what did you learn?

24 MR. SOBOL: Objection.

25 THE WITNESS: Well, it's --

1 there was particular cases, you know.

2 You'd just find some particular

3 documents, and that --

4 QUESTIONS BY MR. KEYES:

5 Q. So can you identify for me any

6 year between 2006 and 2018 when the Summit

7 County ADM Board created and funded a new

8 position because of the opioid problem?

9 A. I don't remember.

10 Q. Can you identify for me, for

11 any year between 2006 and 2018, when the

12 Summit County Children's Services Board

13 created and funded a new position because of

14 the opioid problem?

15 MR. SOBOL: Objection.

16 THE WITNESS: Okay. Before I

17 answer your question, I want to

18 clarify, it's not necessary for this

19 to take place in order for there to

20 have been opportunity costs. And I

21 don't remember whether I saw anything

22 about a creation of a position.

23 QUESTIONS BY MR. KEYES:

24 Q. Did you look into it?

25 A. Well, I would have been

1 interested in these sort of documents.

2 Q. Why, if it's not necessary to

3 your inquiry?

4 A. Well, it just seemed prudent

5 to, you know, be aware of what's going on in

6 the affected divisions.

7 Q. Did you take any notes as you

8 did this factual inquiry to sort of keep

9 track of what you learned?

10 MR. SOBOL: Objection.

11 THE WITNESS: I don't think so,

12 no.

13 QUESTIONS BY MR. KEYES:

14 Q. Do you talk about it at all in

15 your report?

16 MR. SOBOL: Objection.

17 THE WITNESS: Talk about what?

18 QUESTIONS BY MR. KEYES:

19 Q. About whether the Summit County

20 Children's Services Board created or funded

21 any new position because of the opioid

22 problem in any year between 2006 and 2018?

23 A. Well, my report contains a lot

24 of details on staffing at all the affected

25 divisions.

1 Q. Do you talk about that at all
2 in your report?
3 MR. SOBOL: Objection.
4 QUESTIONS BY MR. KEYES:
5 Q. In the narrative report, you
6 have this --
7 A. Narrative report.
8 Q. -- you have this long report.
9 Do you talk about it at all in
10 your report?
11 MR. SOBOL: Objection. Asked
12 and answered.
13 THE WITNESS: Yeah, this is --
14 I'm getting a little lost again.
15 This is ADM? ADM in a
16 particular county?
17 QUESTIONS BY MR. KEYES:
18 Q. This is the Summit County
19 Children's Services Board.
20 A. Summit County Children's
21 Services.
22 Q. We already covered Summit
23 County ADM Board --
24 A. Okay. Sorry.
25 Q. -- where you said, "I think I

1 learned something, but I don't remember what
2 it is."
3 MR. SOBOL: Objection.
4 Mischaracterizes the answer.
5 QUESTIONS BY MR. KEYES:
6 Q. Same question for Summit County
7 Children's Service Board.
8 MR. SOBOL: What's the
9 question?
10 QUESTIONS BY MR. KEYES:
11 Q. You said it's not necessary --
12 I want to be clear. You said it's not
13 necessary, but you still were interested
14 because you thought it was prudent.
15 And I asked what you remember
16 learning, and you said, I don't know.
17 And I said, do you talk about
18 the concept in the narrative report about
19 whether the Summit County Children's Services
20 Board created and funded any new position
21 because of the opioid problem?
22 MR. SOBOL: We don't even need
23 a stenographer, do we?
24 Do you have a question?
25 MR. KEYES: I think the

1 stenographer is great.
2 THE WITNESS: I --
3 MR. SOBOL: There's no question
4 before you.
5 He just gave two sentences
6 about what it is that he recalls the
7 testimony being.
8 QUESTIONS BY MR. KEYES:
9 Q. Do you talk in the narrative
10 section of your report about whether the
11 Summit County Children's Services Board
12 created or funded any new position because of
13 the opioid problem?
14 A. I don't think that section in
15 my report discusses a new position.
16 Q. Can you identify for me any
17 year between 2006 and 2018 when the Summit
18 County Prosecutor created or funded a new
19 position because of the opioid problem?
20 MR. SOBOL: Objection.
21 THE WITNESS: Not as I sit here
22 today, as people say.
23 QUESTIONS BY MR. KEYES:
24 Q. Can you identify for me any
25 year between 2006 and 2018 when the Summit

1 County Court of Common Pleas created or
2 funded a new position because of the opioid
3 problem?
4 MR. SOBOL: Objection.
5 THE WITNESS: Again, this is
6 not necessary for an opportunity cost
7 investigation.
8 But in answer to your question,
9 I don't recall.
10 QUESTIONS BY MR. KEYES:
11 Q. Can you identify for me any
12 year between 2006 and 2018 when the Summit
13 County Juvenile Court created or funded a new
14 position because of the opioid problem?
15 MR. SOBOL: Objection.
16 THE WITNESS: I don't recall.
17 QUESTIONS BY MR. KEYES:
18 Q. Can you identify for me any
19 year between 2006 and 2018 when the Summit
20 County Sheriff's Office created and funded a
21 new position because of the opioid problem?
22 MR. SOBOL: Objection.
23 THE WITNESS: Again, it's not
24 necessary for an opportunity cost
25 analysis, but I don't recall the

1 specifics of your question.
 2 QUESTIONS BY MR. KEYES:
 3 Q. Can you identify for me any
 4 year between 2006 and 2018 when the Summit
 5 County Jail created and funded a new position
 6 because of the opioid problem?
 7 MR. SOBOL: Objection.
 8 THE WITNESS: It's the same
 9 answer: It's not necessary for
 10 opportunity costs, and I don't
 11 remember anything about a new
 12 position.
 13 QUESTIONS BY MR. KEYES:
 14 Q. Can you identify for me any
 15 year between 2006 and 2018 when Summit County
 16 Alternative Corrections created and funded a
 17 new position because of the opioid problem?
 18 MR. SOBOL: Objection.
 19 THE WITNESS: It would be the
 20 same answer: It's not necessary for
 21 opportunity costs, and I don't recall
 22 about a new position.
 23 QUESTIONS BY MR. KEYES:
 24 Q. Can you identify for me any
 25 year between 2006 and 2018 when Summit County

1 Adult Probation created and funded a new
 2 position because of the opioid problem?
 3 MR. SOBOL: Objection.
 4 THE WITNESS: It would be the
 5 same answer: It's not necessary for
 6 opportunity costs, and I don't recall
 7 the specifics of a new position.
 8 QUESTIONS BY MR. KEYES:
 9 Q. Can you identify for me any
 10 year between 2006 and 2018 when Summit County
 11 Medical Examiner created and funded a new
 12 position because of the opioid problem?
 13 MR. SOBOL: Objection.
 14 THE WITNESS: It would be the
 15 same answer: It's not necessary for
 16 opportunity costs, and I don't recall
 17 the specifics of Medical Examiner.
 18 QUESTIONS BY MR. KEYES:
 19 Q. Turning then to Cuyahoga
 20 County. For any of the divisions that you
 21 identified as an affected division, did any
 22 of them, in any year between 2006 and 2018,
 23 create and fund a new position because of the
 24 opioid problem?
 25 MR. SOBOL: Objection.

1 THE WITNESS: This would be the
 2 same answer I gave for the divisions
 3 at Summit: It's not necessary to
 4 determine opportunity costs to have a
 5 division hired new personnel.
 6 And then with respect to the
 7 specifics about each division and each
 8 year, I don't recall.
 9 QUESTIONS BY MR. KEYES:
 10 Q. Did the Summit County ADM Board
 11 in 2006 shift any personnel from one
 12 department to another or from one activity to
 13 another because of the opioid problem?
 14 MR. SOBOL: Objection.
 15 "Shift."
 16 THE WITNESS: Well, the funding
 17 for staff means they would have
 18 devoted their time to opioid-related
 19 activities. That's what opportunity
 20 cost tells you.
 21 Beyond that, I'm not sure how
 22 to interpret the nature of your
 23 question.
 24 QUESTIONS BY MR. KEYES:
 25 Q. In 2006, did the Summit County

1 ADM Board reassign any personnel from one
 2 department to another?
 3 MR. SOBOL: Objection.
 4 QUESTIONS BY MR. KEYES:
 5 Q. Because of the opioid problem?
 6 MR. SOBOL: Objection.
 7 THE WITNESS: Well, this,
 8 again, isn't necessary for opportunity
 9 cost, and I -- in answer to your
 10 question about the assignment, I'm not
 11 sure.
 12 QUESTIONS BY MR. KEYES:
 13 Q. Okay. In 2007, did the Summit
 14 County ADM Board reassign any personnel from
 15 one department to another?
 16 MR. SOBOL: Objection.
 17 THE WITNESS: This would be the
 18 same answer as to the previous
 19 question: It's not necessary for
 20 opportunity costs, and I'm not sure
 21 about the reassignment.
 22 QUESTIONS BY MR. KEYES:
 23 Q. In any year between 2008 and
 24 2018, did the Summit County ADM Board
 25 reassign any personnel from one department to

1 another because of the opioid problem?

2 A. This would be the same answer:

3 It's not necessary from the standpoint of

4 opportunity costs, and I'm not sure about

5 reassignment.

6 Q. Can you tell me for any year

7 between 2006 and 2018 whether Summit County

8 Children's Services Board reassigned any

9 personnel from one department to another

10 because of the opioid problem?

11 MR. SOBOL: Objection.

12 THE WITNESS: This would be the

13 same answer as to the ADAMHS Board:

14 It's not necessary for me to know that

15 in order to estimate opportunity

16 costs.

17 And with respect to your

18 question about reassignment, I'm not

19 sure.

20 QUESTIONS BY MR. KEYES:

21 Q. For any year between 2006 and

22 2018, did any of the Summit County affected

23 divisions reassign any personnel from one

24 department to another because of the opioid

25 problem?

1 MR. SOBOL: Objection.

2 THE WITNESS: Again, to

3 estimate opportunity costs, I'm able

4 to do that with the numbers that I

5 have.

6 And with respect to your

7 question about specific reassignments,

8 I'm not sure.

9 QUESTIONS BY MR. KEYES:

10 Q. In 2000 -- for any year between

11 2006 and 2018, did any of the Cuyahoga County

12 affected divisions reassign any personnel

13 from one department to another because of the

14 opioid problem?

15 A. This would be the same -- the

16 nature of the answer would be the same as for

17 Summit: For me to do this work in this

18 matter, to be able to quantify opportunity

19 costs, I had what I needed to know.

20 And with respect to your

21 specific question, I'm not sure about

22 reassignment.

23 Q. In 2006, did the Summit County

24 ADM Board change the job responsibilities for

25 any employee because of the opioid problem?

1 MR. SOBOL: Objection to the

2 form.

3 THE WITNESS: Well, this is a

4 version of the question you just

5 asked.

6 I wonder if after I answer this

7 question, if we could take a break for

8 a bit.

9 MR. SOBOL: Whatever.

10 THE WITNESS: So in order to

11 estimate opportunity costs, it's not

12 necessary for me to know whether job

13 responsibility was changed. I think

14 that was the question. I'm still able

15 to do that with the information that I

16 have.

17 And I'm not sure about in a

18 particular year whether they changed

19 job assignments.

20 QUESTIONS BY MR. KEYES:

21 Q. Okay. Let me just finish this

22 line of questioning.

23 In any --

24 MR. SOBOL: Do you want to take

25 a break?

1 MR. KEYES: Can I ask a few

2 questions just to finish this?

3 MR. SOBOL: He asked for a

4 break. Let him have a break.

5 It's up to you.

6 THE WITNESS: Go ahead.

7 QUESTIONS BY MR. KEYES:

8 Q. Okay. For any year between

9 2006 and 2018, did the Summit County ADM

10 Board change the job responsibilities for any

11 employee because of the opioid problem?

12 MR. SOBOL: Objection. "Job

13 responsibilities."

14 THE WITNESS: This answer will

15 be similar to a series of answers I've

16 given the last few minutes: In order

17 to estimate opportunity costs, I had

18 the information I needed in order to

19 estimate that in dollar terms.

20 And with respect to your

21 question about job responsibilities,

22 it wasn't necessary for me to know if

23 there were job responsibilities

24 altered because of the opioid crisis.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Okay. Last question and then

3 we can take a break.

4 For any year between 2006 and

5 2018, did any of the Summit County affected

6 divisions or any of the Cuyahoga County

7 affected divisions change the job

8 responsibilities for any employee because of

9 the opioid problem?

10 MR. SOBOL: Objection.

11 THE WITNESS: Okay. As an

12 economist, in order to fulfill my

13 assignment in this case, which is to

14 estimate the opportunity cost of these

15 budget funds, I was able to do that

16 based on the information that I had in

17 a reliable and professionally

18 acceptable way.

19 With respect to your question

20 about whether job responsibilities

21 were changed in either county over a

22 11-year period in a total of maybe 19

23 affected divisions, I have to answer

24 that I'm not sure.

25 VIDEOGRAPHER: The time is

1 10:07 a.m., and we're off the record.

2 (Off the record at 10:07 a.m.)

3 VIDEOGRAPHER: The time is

4 10:30 a.m., and we're on the record.

5 QUESTIONS BY MR. KEYES:

6 Q. Professor McGuire, in 2006, did

7 the Summit County ADM Board reallocate any

8 money from one nonopioid-related program or

9 account in order to address an opioid-related

10 need?

11 A. Nonopioid-related account?

12 I'm not sure if they moved

13 money between accounts. I'm not sure.

14 Q. In 2007, did the Summit County

15 ADM Board reallocate any money from one

16 nonopioid-related program or account in order

17 to address an opioid-related need?

18 MR. SOBOL: Objection.

19 THE WITNESS: Again, this isn't

20 necessary for me to be able to

21 identify opportunity cost.

22 In answer to your question, I'm

23 not sure what programs and accounts

24 may have been subject to some

25 reallocation.

1 QUESTIONS BY MR. KEYES:

2 Q. For any year between 2006 and

3 2018, did the Summit County ADM Board

4 reallocate any money from one

5 nonopioid-related program or account in order

6 to address an opioid-related need?

7 MR. SOBOL: Objection.

8 THE WITNESS: Okay. This would

9 be a similar answer to I gave a minute

10 ago: In order to assess opportunity

11 costs, it's not necessary for me to

12 know the kind of program and account.

13 And with respect to your

14 question about program and accounts,

15 I'm not sure if there was reallocation

16 across or within programs and

17 accounts.

18 QUESTIONS BY MR. KEYES:

19 Q. For any year between 2006 and

20 2018, did any of the Summit County affected

21 divisions reallocate any money from one

22 nonopioid-related program or account in order

23 to address an opioid-related need?

24 MR. SOBOL: Objection.

25 THE WITNESS: Okay. In order

1 to estimate opportunity costs, it's

2 not necessary for me to be able to

3 identify specific reallocations

4 between or across programs and

5 accounts.

6 And in answer to your question,

7 I'm not sure if there were a program

8 and/or account-related allocations.

9 QUESTIONS BY MR. KEYES:

10 Q. For any year between 2006 and

11 2018, did any of the Cuyahoga County affected

12 divisions reallocate any money from one

13 nonopioid-related program or account in order

14 to address an opioid-related need?

15 MR. SOBOL: Objection. In

16 part, asked and answered.

17 THE WITNESS: Again, this is

18 not something I need to know in order

19 to fulfill my assignment here, to

20 estimate opportunity costs.

21 And with respect to your

22 question, I'm not sure about the --

23 your division reallocation across

24 programs and accounts.

25

1 QUESTIONS BY MR. KEYES:

2 Q. You said you didn't need to

3 know.

4 For any year between 2006 and

5 2018, did you attempt to identify whether any

6 of the Summit County affected divisions

7 reallocated any money from one

8 nonopioid-related program or account to

9 address an opioid-related need?

10 A. Okay. What I did for all these

11 years, for all these divisions, is to measure

12 with methods that we've discussed at some

13 point today and yesterday {sic} the funds

14 that each division in each year devoted to

15 opioid-related activities. And the economic

16 principle of opportunity cost means that

17 that's what I need to know: how much of

18 these funds that had alternative uses were

19 spent on opioid-related activities.

20 Q. My question was: For any year

21 between 2006 and 2018, did you attempt to

22 identify whether any of the Summit County

23 affected divisions reallocated any money from

24 a nonopioid-related program or account to

25 address an opioid-related need?

1 MR. SOBOL: Objection. Asked

2 and answered.

3 THE WITNESS: My task was to

4 estimate opportunity costs, which is

5 what I focused on. And the estimate

6 of opportunity cost is based on a

7 measure of the funds devoted to the

8 opioid-related activity.

9 It's sufficient for me as an

10 economist to be able to determine

11 opportunity cost, to measure those

12 funds and to be aware that there are

13 other uses for those funds.

14 In that context, the numbers I

15 came up with are the right ones.

16 QUESTIONS BY MR. KEYES:

17 Q. What steps did you take to be

18 aware that there are other uses for the funds

19 that you've said were the opioid-related

20 expenditures?

21 MR. SOBOL: Objection.

22 THE WITNESS: Well, to some

23 degree these -- this is based on

24 experience. It would be a rare

25 household, it would be a rare

1 department, it would be a rare

2 anything, really, that if an

3 unexpected cost is imposed on the

4 decision-maker that there's nothing

5 else they could do with those funds.

6 That doesn't make a lot of sense to

7 me, just as a microeconomist.

8 And here, as we've discussed, I

9 was interested in confirming that by

10 information related to diversion. And

11 in speaking with and looking for

12 written material and for reading

13 depositions, there's evidence that

14 diversion did take place. Specific

15 examples of if the police are doing

16 this, then they couldn't be doing

17 that.

18 So I find it to be, you know, a

19 conclusion that I hold very firmly

20 that, yes, if you're spending money on

21 one thing, you can't spend it on

22 something else.

23 QUESTIONS BY MR. KEYES:

24 Q. You believe that to be a

25 truism?

1 MR. SOBOL: Objection.

2 THE WITNESS: No, that's not a

3 truism, but it's accurate in lots of

4 contexts.

5 QUESTIONS BY MR. KEYES:

6 Q. And it's an assumption here on

7 your part?

8 MR. SOBOL: Objection. Asked

9 and answered.

10 THE WITNESS: No.

11 QUESTIONS BY MR. KEYES:

12 Q. Okay. So tell me the specific

13 steps you took to identify concrete things

14 that any of these divisions would have spent

15 the money on if they did not spend the money

16 on opioid-related activities.

17 MR. SOBOL: Objection. Asked

18 and answered.

19 THE WITNESS: I think this is a

20 version of a similar question I've

21 been asked a few times this morning.

22 And what was necessary for me to do

23 was to identify the funds devoted to

24 opioid-related activities, which are a

25 metric of the opportunity cost of

1 those funds so long as there are
2 alternative uses for those funds.
3 You know, as in the case of a
4 household in which, say, \$75 is spent
5 on an unexpected car repair, that \$75
6 is a good measure of the opportunity
7 cost of those funds. And I can say
8 that with confidence, and I can say
9 that based on sound and well-accepted
10 principles of economics without
11 needing to know whether that \$75 would
12 have spent on dog food or whether it
13 would have been, you know, I don't
14 know, spent on anything else.
15 So for me to do my job, it was
16 sufficient for me to measure the funds
17 devoted to the opioid-related
18 activity.
19 QUESTIONS BY MR. KEYES:
20 Q. I take it you like the \$75
21 example. You've used it a number of times as
22 a hypothetical.
23 And if I understand your
24 hypothetical, someone has a damaged car and
25 it's going to cost \$75 to repair it?

1 A. That's the basis of my example,
2 yes.
3 Q. Okay. So I take it that in
4 your hypothetical someone has gone to a shop
5 and they've gotten an estimate that says it's
6 going to cost \$75.
7 MR. SOBOL: Objection.
8 Is there a question?
9 QUESTIONS BY MR. KEYES:
10 Q. Is that correct?
11 A. Well, not exactly. It was more
12 what I -- I think what I said in my example
13 is that they had to pay \$75 to repair the
14 car.
15 Q. Okay. Well, let me refine this
16 hypothetical.
17 I have a car and it's damaged.
18 I take it to a shop, and I get a \$75
19 estimate. \$75 to repair the damage.
20 Okay?
21 A. Okay.
22 Q. I have a friend who works at
23 another shop, and he says he can do the work
24 for a hundred dollars to repair the same
25 damage.

1 Okay?
2 A. Okay.
3 Q. And I decide I'm going to have
4 my friend's shop do the repair work because
5 it gets repaired, and I want my friend's shop
6 to get the business.
7 Okay?
8 A. Okay.
9 Q. So I spend a hundred dollars to
10 get the car repaired.
11 A. Yes.
12 Q. Is my opportunity cost \$75 or a
13 hundred dollars in that example?
14 A. Well, for an economist, the --
15 what you purchase with your funds that have
16 to do with car repair, in this case, are a
17 little more complicated because it's not
18 simply one thing, which is to get your car
19 repaired, but you're also getting value from
20 the transaction with your friend. And
21 that's -- you know, for whatever reason, you
22 find that to be worthwhile doing. And you
23 make the decision to pay a hundred dollars to
24 get your car fixed.
25 The opportunity cost of those

1 funds is a question about what else could
2 have been done with the money with respect to
3 other things your household could have
4 purchased. And the answer to that is, you
5 would have had a hundred dollars had you not
6 purchased the car repair from the friend. So
7 \$100.
8 Q. So in my hypothetical, my
9 opportunity cost is a hundred dollars?
10 A. In your hypothetical, when
11 you've decided that you want to go to your
12 friend for the transaction and you spend a
13 hundred dollars on that, the opportunity cost
14 of that hundred dollars is a hundred dollars
15 less of other stuff you could buy.
16 Q. Let me change the hypothetical.
17 I still have gone to the shop down the
18 street. They've still given me a \$75 repair
19 estimate for that damage.
20 My girlfriend works at another
21 shop and --
22 A. Does your wife know?
23 Q. -- and she says that her shop
24 can fix it for 200 bucks.
25 A. Okay.

1 Q. And because I have a crush on
2 her, I decide I'm going to take my car to
3 that shop, and I'm going to spend \$200 for
4 that shop to repair it.
5 A. Okay.
6 Q. In that hypothetical, my
7 opportunity cost is \$75 or \$200?
8 A. Okay. This hypothetical, to an
9 economist, isn't very different than your
10 first hypothetical.
11 You had a friend whose business
12 you -- giving him the business was worth kind
13 of -- I think the implication of your
14 hypothetical, it was worth \$25 to you to be
15 able to give the \$100 to your friend and to
16 repair your car.
17 You have another friend who you
18 value more highly. You're even happier about
19 giving her shop the business, and you spend
20 \$200 to get your car repaired. But you're
21 kind of buying -- you would call it in
22 economics a joint product. You're buying a
23 car repair plus you're buying something else,
24 which is the regard with which your friend
25 holds you, or however you want to phrase

1 that, and you spend \$200 for that.
2 Then the opportunity cost
3 question is: How much fewer of other
4 household items would you be in position to
5 buy after you decided to spend \$200 for your
6 car repair? And it's \$200 less.
7 So the answer with respect to
8 the opportunity cost of that \$200 is \$200.
9 Q. And so the cost consequence of
10 my decision is \$200, because that's what I
11 elected to spend, correct?
12 A. Well, if I could phrase it in
13 my terms, the opportunity cost of those \$200
14 is \$200.
15 Q. And to you, it doesn't matter
16 whether I would spend that \$200 on something
17 else. The fact that I have spent \$200 means
18 the opportunity cost is \$200, correct?
19 MR. SOBOL: Objection.
20 THE WITNESS: I'm not sure I'm
21 following what you're trying to get at
22 here. Sorry.
23 QUESTIONS BY MR. KEYES:
24 Q. Well, I think you said before
25 it doesn't matter how I would have spent that

1 \$200 on something else instead of taking this
2 damaged car to my girlfriend's shop. To you
3 the mere fact that I spent \$200 means the
4 opportunity cost is \$200, regardless of how I
5 could have spent the money elsewhere.
6 MR. SOBOL: Objection.
7 QUESTIONS BY MR. KEYES:
8 Q. Is that correct?
9 MR. SOBOL: Objection.
10 THE WITNESS: Well, I think the
11 way to say that in conventional
12 economics terms is that it's not
13 necessary for me, as an evaluator of
14 this opportunity cost, to know
15 precisely what you would have done
16 with the \$200. You might have saved
17 some. You might have taken your wife
18 out to dinner.
19 In any case, the opportunity
20 cost of whatever that is would be
21 \$200. It's very mainstream,
22 down-the-middle-of-the-plate
23 economics.
24 QUESTIONS BY MR. KEYES:
25 Q. For any year between 2006 and

1 2018, did you attempt to identify whether any
2 of the Cuyahoga County affected divisions
3 reallocated any money from a
4 nonopioid-related program or account to
5 address an opioid-related need?
6 MR. SOBOL: Objection. Asked
7 and answered.
8 THE WITNESS: In order to
9 identify opportunity cost, which is
10 what I needed to do for my report, it
11 was sufficient for me to get good
12 measures of the funds devoted to
13 opioid-related activities. It wasn't
14 necessary to be able to, you know,
15 describe the ins and outs of that.
16 And so with respect to your
17 question of reallocation on accounts
18 or programs -- I forget how you
19 phrased it -- I'm not sure.
20 QUESTIONS BY MR. KEYES:
21 Q. My question was: Did you
22 attempt to do that identification?
23 You said you didn't need to.
24 My question is not whether you
25 needed to. My question was did you.

1 Did you attempt -- for any year
 2 between 2006 and 2018 attempt to identify
 3 whether any of the Cuyahoga County affected
 4 divisions reallocated any money from a
 5 nonopioid-related program or account to
 6 address an opioid-related need?
 7 MR. SOBOL: Objection. Asked
 8 and answered.
 9 THE WITNESS: Yeah. So that
 10 whoever is watching this or reading it
 11 understands where I'm coming from on
 12 this, I need to explain why I didn't
 13 need to do that.
 14 And the reason is that my job,
 15 as I understood it, was to estimate
 16 the opportunity cost of funds devoted
 17 to the opioid-related activities. And
 18 that's what I did. And that told me
 19 what I needed to know to be able to
 20 get a good measure of the cost to the
 21 bellwether counties here.
 22 And it wasn't necessary for me
 23 to determine what the alternative
 24 spending would have been in the
 25 affected divisions in either county

1 over the years.
 2 QUESTIONS BY MR. KEYES:
 3 Q. You have opined to a reasonable
 4 degree of economic certainty that opportunity
 5 costs exist for each of the affected
 6 divisions, correct?
 7 MR. SOBOL: Objection. You may
 8 answer.
 9 THE WITNESS: I'll say okay.
 10 QUESTIONS BY MR. KEYES:
 11 Q. And you have placed the value
 12 on those opportunity costs as the dollars
 13 that you quantified as being spent on
 14 opioid-related activities, correct?
 15 A. That was my measure of
 16 opportunity costs, yes, the dollars spent on
 17 opioid-related activities.
 18 Q. Okay. For any --
 19 A. Pardon me, just -- I'm sorry,
 20 just one qualification of that.
 21 Of the potentially affected
 22 costs.
 23 Q. For any of the Summit County
 24 affected divisions, tell me one concrete way
 25 the money would have been spent by that

1 division if those dollars were not spent on
 2 opioid-related activities.
 3 MR. SOBOL: Objection. Asked
 4 and answered.
 5 THE WITNESS: I'm sorry, do you
 6 mean would or could in that question?
 7 QUESTIONS BY MR. KEYES:
 8 Q. Would.
 9 A. Would.
 10 Q. Would.
 11 For any of the Summit County
 12 affected divisions, tell me one concrete way
 13 the money would have been spent by that
 14 division if those dollars were not spent on
 15 opioid-related activities.
 16 A. Okay.
 17 MR. SOBOL: Objection. Asked
 18 and answered.
 19 THE WITNESS: The application
 20 of the principle of opportunity costs
 21 in this context provides an answer to
 22 that in the form that had the money
 23 not been devoted to opioid-related
 24 activities, it would have been
 25 distributed across some other of the

1 activities of the division.
 2 QUESTIONS BY MR. KEYES:
 3 Q. Can you be any more specific
 4 than that?
 5 MR. SOBOL: Objection. Asked
 6 and answered.
 7 THE WITNESS: Well, in order to
 8 estimate opportunity cost, which is my
 9 assignment here, it's not necessary
 10 for me to identify exactly what other
 11 program or account would have been --
 12 would have had access to the funds
 13 that were devoted to opioid-related
 14 activities. It's completely
 15 sufficient for me to know the
 16 opioid-related activity funds.
 17 QUESTIONS BY MR. KEYES:
 18 Q. So for any of the Summit County
 19 affected divisions, can you give me a single
 20 example of what the dollars would have been
 21 spent on if they had not been spent on what
 22 you identified as the opioid-related
 23 expenditures?
 24 MR. SOBOL: Objection. Asked
 25 and answered.

1 THE WITNESS: Well, this is
 2 the -- exactly the same question for a
 3 different county. And my answer, to
 4 the best of my ability, will be the
 5 same, which is, for me to do my
 6 assignment, what -- you know, and what
 7 that involved is application of the
 8 principle of opportunity cost, then
 9 it's completely sufficient for me to
 10 identify the funds that are devoted to
 11 opioid-related activities, and it's
 12 not necessary for me to identify the
 13 particular program or account or
 14 activity that any of these divisions
 15 would have spent those funds on in the
 16 alternative.
 17 It's sufficient for me to know
 18 they could have spent those on the
 19 alternative, and they have, you know,
 20 a value in alternative use, which is
 21 the idea of opportunity cost.
 22 QUESTIONS BY MR. KEYES:
 23 Q. Did you talk to a single person
 24 who works for any of the Summit County
 25 affected divisions to identify what the

1 dollars would have been spent on in a
 2 particular year if they had not been spent on
 3 what you identified as opioid-related
 4 expenditures?
 5 MR. SOBOL: Objection. Asked
 6 and answered.
 7 THE WITNESS: Well, this
 8 follows from the question you asked a
 9 minute ago.
 10 For me to do what I needed to
 11 do, I needed to know what were the
 12 funds devoted to opioid-related
 13 activities.
 14 To identify an alternative
 15 world in which those funds were not
 16 devoted to opioid-related activities,
 17 it wasn't necessary for me to know
 18 what a particular official in a
 19 particular division in a particular
 20 year would have done alternatively.
 21 What I needed to establish is,
 22 here's what was spent on
 23 opioid-related activities, and these
 24 funds had alternative uses.
 25

1 QUESTIONS BY MR. KEYES:
 2 Q. Right. You said you didn't
 3 need to do it; you've made that point many
 4 times.
 5 Did you talk to a single person
 6 who works for any of the Summit County
 7 affected divisions to identify what the
 8 dollars would have been spent on --
 9 A. Yeah.
 10 Q. -- in a particular year if they
 11 hadn't been spent on what you identified as
 12 opioid-related expenditures?
 13 MR. SOBOL: Objection.
 14 QUESTIONS BY MR. KEYES:
 15 Q. Did you do it?
 16 MR. SOBOL: Objection. Asked
 17 and answered.
 18 THE WITNESS: In order to have
 19 this answer be well-understood by
 20 whoever watches the tape or reads the
 21 transcript, I think it's important for
 22 me to take a minute to explain the --
 23 what I needed to do in this case,
 24 which is to identify the funds devoted
 25 to opioid-related activities.

1 And it wasn't necessary for me
 2 to come up with a reliable estimate of
 3 opportunity cost to know what, in an
 4 alternative world, a particular
 5 official would have done had some of
 6 those funds be freed up for other
 7 uses.
 8 It was sufficient for me to
 9 know that there were alternative uses
 10 of those funds, and I have a good
 11 economic measure of what the
 12 opportunity cost of those funds were.
 13 QUESTIONS BY MR. KEYES:
 14 Q. Did you talk to a single person
 15 who works for any of the Cuyahoga County
 16 affected divisions to identify what the
 17 dollars would have been spent on?
 18 MR. SOBOL: Objection. Asked
 19 and answered.
 20 QUESTIONS BY MR. KEYES:
 21 Q. Same answer?
 22 MR. SOBOL: Objection. Asked
 23 and answered.
 24 You may answer.
 25 THE WITNESS: Well, I would

1 just refer to my previous answer,
 2 which would be exactly the same, with
 3 a change in the location.
 4 QUESTIONS BY MR. KEYES:
 5 Q. Did you review any historical
 6 budget or finance or accounting documents to
 7 identify what the dollars would have been
 8 spent on if they had not spent on what you
 9 identified as opioid-related activities?
 10 MR. SOBOL: Objection. Asked
 11 and answered.
 12 THE WITNESS: I have a hard
 13 time with a "would" verb here, but let
 14 me answer as best I can.
 15 In order to do my job of
 16 estimating opportunity cost, it was
 17 sufficient for me to identify how much
 18 of the funds of each division were
 19 devoted to opioid-related activities.
 20 It wasn't necessary for me to
 21 identify what would have happened had
 22 an official had more budget
 23 flexibility and they might have been
 24 able to move funds that -- funds that
 25 were not needed for opioid-related

1 activities; only that there would be
 2 alternative uses for those funds and
 3 they would have been devoted to
 4 something.
 5 But I don't need to know
 6 exactly what the official would have
 7 done with those funds.
 8 QUESTIONS BY MR. KEYES:
 9 Q. Well, if you haven't talked to
 10 anyone and you haven't reviewed any
 11 historical budgeting, finance or accounting
 12 documents to identify what the dollars would
 13 have been spent on, because you say, "I just
 14 know they would have been spent on something
 15 else," how do you know that they would have
 16 been spent on something else?
 17 MR. SOBOL: Objection. Asked
 18 and answered.
 19 THE WITNESS: Well, this partly
 20 is -- pardon the expression -- common
 21 sense. For a household, for a
 22 corporation, for a government
 23 division, for the United Nations, for
 24 the federal government, if funds are
 25 not devoted to something in

1 particular, they have alternative
 2 uses. And in my experience, that's a
 3 pretty general characterization of the
 4 situation of an economic actor.
 5 And a fundamental element of
 6 economics is scarcity. And what
 7 scarcity has to do with in this case
 8 is funds are limited. And when funds
 9 are limited, they have alternative
 10 uses.
 11 And just one more quick comment
 12 about this. I was interested in
 13 confirming evidence of diversion,
 14 which is another --
 15 QUESTIONS BY MR. KEYES:
 16 Q. Diversion of funds?
 17 A. Diversion of funds is something
 18 we've talked about earlier.
 19 And I did speak with and find
 20 written evidence of and read deposition
 21 testimony of -- that confirmed the presence
 22 of, you know, alternative uses of funds.
 23 Q. And when you say "alternative
 24 uses," you're saying possibilities; they
 25 could have spent the dollars on those other

1 things.
 2 MR. SOBOL: Objection.
 3 QUESTIONS BY MR. KEYES:
 4 Q. Not that they would have,
 5 because I already asked you the "would have"
 6 questions, and you said you'd need to look
 7 into that.
 8 MR. SOBOL: Objection.
 9 QUESTIONS BY MR. KEYES:
 10 Q. So when you say you did speak
 11 with and find evidence in the deposition of
 12 that -- testimony that confirms the presence
 13 of alternative uses, you are flagging
 14 alternative possibilities, correct?
 15 MR. SOBOL: Objection. Asked
 16 and answered.
 17 THE WITNESS: Well, there's two
 18 things I spoke about. The first one
 19 was more general in a way, the
 20 economics of scarcity that talks about
 21 the availability of funds devoted to
 22 alternative uses.
 23 With respect to some of the
 24 diversion, there was more specifics in
 25 some of the testimony, some of the

1 deposition testimony, that had to do
 2 with police officers who may have
 3 spent -- had to spend time on
 4 opioid-related activities, who,
 5 according to the testimony that I
 6 remember, they not only could have but
 7 would have been attending to rapes and
 8 murders.

9 So it's -- I mean, the
 10 could/would -- I hope I'm answering in
 11 the could/would space that you're
 12 asking about here.

13 QUESTIONS BY MR. KEYES:
 14 Q. And the deposition testimony
 15 that you're referencing now is the deposition
 16 testimony you mentioned in your report?

17 A. That's correct.

18 Q. And you said a moment ago you
 19 spoke with people.

20 Who did you speak with?

21 I thought you said a week ago
 22 you spoke with Compass Lexecon, but you
 23 didn't speak with anyone from Cuyahoga County
 24 or Summit County.

25 A. Well, I did --

1 MR. SOBOL: Objection.

2 What's the question?

3 QUESTIONS BY MR. KEYES:
 4 Q. Who'd you speak with?

5 MR. SOBOL: About?

6 THE WITNESS: I don't remember
 7 the names.

8 QUESTIONS BY MR. KEYES:
 9 Q. And you don't remember their
 10 titles, correct?

11 A. No, I'm not so good on that
 12 either. Sorry.

13 Q. And you don't remember their
 14 functions, correct?

15 A. Well, there was some public
 16 safety people. There was some EMS people.
 17 There was some fire department people.

18 Q. Do you have any better
 19 recollection of any of those conversations
 20 today than you had a week ago?

21 A. Not really, no, sorry.

22 Q. Okay. And for the example you
 23 gave, how many rapes or murders were not
 24 investigated because of opioid-related
 25 spending?

1 A. I'm not sure.

2 Q. How many rapes or murders were
 3 not prosecuted because of opioid-related
 4 spending?

5 A. I'm not sure.

6 Q. How many rapes or murders were
 7 not resolved because of opioid-related
 8 spending?

9 A. I'm not sure.

10 Q. Can you identify for me a
 11 single rape or murder that wasn't
 12 investigated, wasn't prosecuted and wasn't
 13 resolved because of opioid-related spending?

14 MR. SOBOL: Objection. Form.

15 THE WITNESS: I'm sorry, I
 16 can't name names of the victims here.

17 QUESTIONS BY MR. KEYES:
 18 Q. And when you spoke to people
 19 earlier, you listed those interviews in your
 20 report, correct?

21 A. Yes.

22 Q. And the people you list in your
 23 report all work for Cleveland, correct?

24 A. Yes.

25 Q. So as we discussed a week ago,

1 you did not talk to anyone who works for
 2 Summit County or Cuyahoga County, correct?

3 MR. SOBOL: Objection. Asked
 4 and answered.

5 THE WITNESS: I think we --
 6 when we talked about this a week ago,
 7 there was some phone calls. I don't
 8 remember the names and dates or even
 9 how many I was on.

10 QUESTIONS BY MR. KEYES:
 11 Q. Did you study whether any of
 12 the affected divisions in any particular year
 13 would have saved the money if they had not
 14 spent it on opioid-related expenditures?

15 MR. SOBOL: Objection. Asked
 16 and answered.

17 THE WITNESS: Again, the
 18 principle of opportunity costs implies
 19 that the right way to go about this
 20 from an economic point of view is to
 21 identify the magnitude of funds that
 22 are devoted to the opioid-related
 23 activities.

24 And what the alternatives to a
 25 particular division are will vary.

1 And so long as they have alternative
 2 uses for the funds, the right metric
 3 of opportunity cost is the metric that
 4 I applied in my report.
 5 So I don't need to know whether
 6 they saved it or they spent it.
 7 QUESTIONS BY MR. KEYES:
 8 Q. For 2006, did the Summit County
 9 ADM Board spend all of the money in its
 10 approved budget?
 11 MR. SOBOL: Objection.
 12 THE WITNESS: I would have to
 13 go back and look.
 14 QUESTIONS BY MR. KEYES:
 15 Q. Was that relevant to your
 16 analysis, whether the Summit County ADM Board
 17 spent all of the money in its approved budget
 18 in 2006?
 19 A. Well, I was able to identify
 20 opportunity costs in that case by examining
 21 the opioid-related activities and the cost of
 22 those activities, without knowing how the
 23 funds otherwise would have been used.
 24 So just to complete your --
 25 complete the answer to the question, it

1 wasn't necessary for me to know whether they
 2 spent or overspent their budget.
 3 Q. Did you investigate whether,
 4 for any year between 2006 and 2018, the
 5 Summit County ADM Board spent all of the
 6 money in its approved budget?
 7 MR. SOBOL: Objection.
 8 THE WITNESS: Well, this is
 9 similar to the question about a
 10 particular year.
 11 In order to do my job and
 12 estimate opportunity cost, it's
 13 sufficient for me to measure the funds
 14 devoted to opioid-related activities.
 15 How much they were spending on
 16 other activities, how much they
 17 were -- the budget, the fund balance
 18 went up and down, is not something I
 19 needed to know in order to come up
 20 with reliable, principled, definite
 21 measure of opportunity costs.
 22 QUESTIONS BY MR. KEYES:
 23 Q. Is it accurate to say that you
 24 did not investigate whether, for any year
 25 between 2006 and 2018, the Summit County ADM

1 Board spent all of the money in its approved
 2 budget?
 3 MR. SOBOL: Objection. Asked
 4 and answered.
 5 THE WITNESS: Again, this is --
 6 in order for me to do my job and to
 7 measure the opportunity cost of funds
 8 that were devoted to opioid-related
 9 activities, it wasn't necessary for me
 10 to investigate what other uses there
 11 would have been for those funds, other
 12 than to establish, yes, there would be
 13 other uses for those funds.
 14 QUESTIONS BY MR. KEYES:
 15 Q. And when you --
 16 A. And just -- excuse me.
 17 And the details of what the
 18 funds would have been devoted to are -- I
 19 don't need to know those in order to measure
 20 opportunity costs.
 21 Q. When you tell me that it wasn't
 22 necessary to do it, you're explaining why you
 23 did not do it, correct?
 24 A. Yes.
 25 Q. Is it accurate to say that you

1 did not investigate whether, for any year
 2 between 2006 and 2018, any of the Summit
 3 County affected divisions spent all the money
 4 in their approved budgets?
 5 MR. SOBOL: Objection.
 6 THE WITNESS: So in order to
 7 make sure someone watching this or
 8 reading the transcript has a complete
 9 answer and a complete understanding of
 10 what I did, to the question, I need to
 11 explain briefly that the principle of
 12 opportunity cost, which is the way an
 13 economist thinks about these kind of
 14 situations, implies that what I should
 15 investigate and what I should measure
 16 are the funds devoted to
 17 opioid-related activities. Then I
 18 have what I need to know.
 19 And it's not necessary for me
 20 to go to an alternative world in which
 21 the funds would have been available
 22 and might have been spent on something
 23 else, other than to establish that
 24 they would have been available and
 25 could have been spent on something

1 else.

2 QUESTIONS BY MR. KEYES:

3 Q. When you tell me that it wasn't

4 necessary to do it, you're explaining why you

5 did not do it, correct?

6 A. I thought that would be

7 important for the audience to know.

8 Q. Is it accurate to say that you

9 did not investigate whether, for any year

10 between 2006 and 2018, any of the Cuyahoga

11 County affected divisions spent all the money

12 in their approved budgets?

13 MR. SOBOL: Objection. Asked

14 and answered.

15 THE WITNESS: Well, the answer

16 to that would be exactly the same as I

17 gave for the other county a few

18 minutes ago.

19 QUESTIONS BY MR. KEYES:

20 Q. At any time in 2006, did the

21 Summit County ADM Board seek permission to

22 spend dollars beyond its approved budget on

23 any opioid-related need?

24 A. This is another version of the

25 question we've been discussing today, and in

1 order for me to identify the opportunity

2 costs of the funds they actually spent, it's

3 not necessary for me to know what they may

4 have wished to do, wanted to do, sought

5 permission to do, in order to accurately

6 identify what the opportunity cost of the

7 funds they actually spent are.

8 Q. And again, when you tell me

9 that it wasn't necessary to do it, you're

10 explaining why you did not do it, correct?

11 A. I think that's important for

12 the audience to hear.

13 Q. At any time between 2006 and

14 2018, did the Summit County ADM Board seek

15 permission to spend dollars beyond its

16 approved budget on any opioid-related need?

17 MR. SOBOL: Objection.

18 THE WITNESS: Okay. So to

19 understand my answer to this question,

20 it's important to keep in mind that

21 I'm applying the well-established

22 economic principle -- pardon me for

23 laughing; it's your fault -- of

24 opportunity cost.

25

1 QUESTIONS BY MR. KEYES:

2 Q. No, you have your speech, and

3 if you're going to give the speech in

4 response to every question, that's fine. But

5 I'm just trying to get a clear yes or no

6 answer to these questions, and you keep

7 giving me a long explanation why it's not

8 necessary.

9 At any time between 2006 and

10 2018, did the Summit County ADM Board seek

11 permission to spend dollars beyond its

12 approved budget on any opioid-related need?

13 MR. SOBOL: Asked and answered.

14 Objection.

15 THE WITNESS: Now, I'm very

16 aware that we've been round and round

17 on versions of this question. The way

18 I want to answer the question is to

19 make sure that if some viewer or

20 reader sees only a sound bite of my

21 testimony, that they understand what I

22 did and why I did it.

23 And I have said it a number of

24 times today, but, you know, within the

25 context of any particular question, I

1 want to make sure it's been stated.

2 And to reiterate, my assignment

3 in this case was to come up with a

4 reliable estimate of the opportunity

5 cost of funds that were devoted to

6 opioid-related activities. That's

7 what I did.

8 And in order to do that, it

9 wasn't necessary for me to know

10 whether the departments might have

11 preferred to do something else,

12 whether they might have over or

13 underspent on any particular thing,

14 whether they would have changed an

15 account, a program. All those things

16 are not necessary in order to just

17 follow through in a very common sense

18 thing of how much did they -- what was

19 the cost of opioid-related activities

20 in this division, in this year, is

21 what they spent on those things.

22 If they didn't spend that, they

23 would have had money to do something

24 else.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Did you investigate whether, at

3 any time between 2006 and 2018, any of the

4 Summit County or Cuyahoga County affected

5 divisions sought permission to spend dollars

6 beyond their approved budget on any

7 opioid-related need?

8 MR. SOBOL: Objection. Asked

9 and answered.

10 THE WITNESS: I'd just like to

11 refer to my previous answer, if you

12 find that --

13 MR. SOBOL: No, if you have --

14 what previous answer?

15 MR. KEYES: The one you just

16 said was asked and answered. It

17 wasn't asked and answered. This is a

18 distinct question.

19 QUESTIONS BY MR. KEYES:

20 Q. You want to incorporate your

21 last answer, but I want the record to be

22 clear, Professor McGuire.

23 A. Okay.

24 Q. So you did not investigate

25 whether at any time, in any year between 2006

1 and 2018, any affected division of either

2 Summit County or Cuyahoga County sought

3 permission to spend dollars beyond their

4 approved budget on any opioid-related need,

5 correct?

6 MR. SOBOL: Objection.

7 Objection. Form. Also objection.

8 Asked and answered.

9 You give any form of an answer

10 you would like.

11 THE WITNESS: Okay. I'd like

12 to give a complete answer to the

13 question for a reader to understand my

14 response to your very general

15 question.

16 And my answer is that for me to

17 fulfill my assignment in this case,

18 it's sufficient for me to know what

19 each division, in each year, in each

20 county, spent on opioid-related

21 activities, which was the focus of my

22 report: to identify those funds.

23 It was not necessary for me

24 to know whether any division, in any

25 year, in either of the counties,

1 sought to do something different.

2 The opportunity cost is a very

3 common sense approach that says, what

4 is the opportunity cost of the

5 \$200,000 that this division spent on

6 opioid-related activities. It's

7 \$200,000. They would have had that

8 money to do something else.

9 And it's sufficient to -- in

10 application of the opportunity cost

11 concept to be able to identify the

12 magnitude of those funds and to

13 establish they could have done

14 something else with those funds.

15 And that's what I did.

16 QUESTIONS BY MR. KEYES:

17 Q. And so that prior answer, you

18 were explaining why you did not conduct that

19 investigation I asked about, correct?

20 MR. SOBOL: Objection. Asked

21 and answered.

22 THE WITNESS: I was trying to

23 give a complete answer so the audience

24 would understand what I did.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Right.

3 And the audience should

4 understand that you didn't do it, and you

5 were giving the reasons why you didn't do

6 it --

7 MR. SOBOL: Objection.

8 QUESTIONS BY MR. KEYES:

9 Q. -- right?

10 MR. SOBOL: What's the...

11 THE WITNESS: Well, I'm -- I

12 was just trying to give a complete

13 answer. I needed to explain a little

14 bit about what opportunity cost was,

15 what the nature of my assignment was,

16 what I need to know in order to do

17 that.

18 It just doesn't take very long

19 for me to say it. I'm pretty

20 practiced at it now. But I think it's

21 something for the audience that they

22 need to hear.

23 QUESTIONS BY MR. KEYES:

24 Q. Right.

25 But again, you told me what was

1 sufficient. You told me what wasn't
 2 necessary.
 3 I want to know whether --
 4 regardless of whether it's necessary or not,
 5 did you do it. Did you investigate at any
 6 time, for any year between 2006 and 2018, for
 7 any affected division for either Summit
 8 County or Cuyahoga County, whether they
 9 sought permission to spend dollars beyond
 10 their approved budget on any opioid-related
 11 need?
 12 MR. SOBOL: Objection.
 13 QUESTIONS BY MR. KEYES:
 14 Q. Did you do it?
 15 MR. SOBOL: Objection. Asked
 16 and answered.
 17 You may give an answer in any
 18 form you think appropriate.
 19 THE WITNESS: First of all, I
 20 don't see any distinction between the
 21 question you just asked and the
 22 question I referred to a few moments
 23 ago as being a very general question.
 24 And it seems like it's an
 25 important question, so in order to

1 address it, I want to be sure to give
 2 a complete answer to the question.
 3 In order for me to do my
 4 assignment in assessing the
 5 opportunity cost for each division,
 6 for both counties, for all the years,
 7 it was necessary for me to identify
 8 the funds devoted to opioid-related
 9 activities.
 10 And that's what I did in my
 11 report. And that was sufficient to
 12 identify the opportunity cost of those
 13 funds.
 14 I didn't need to know whether
 15 any of those divisions in either of
 16 the counties, in any of the years,
 17 sought to do something different with
 18 their funds.
 19 The opportunity cost number is
 20 a very common sense concept. If a
 21 division spends \$200,000 on
 22 opioid-related activities in 2007,
 23 they could do something else with that
 24 money. The \$200,000 is the
 25 opportunity cost of those funds.

1 QUESTIONS BY MR. KEYES:
 2 Q. Did you investigate whether at
 3 any time, for any year between 2006 and 2018,
 4 any of the affected divisions for either
 5 Summit County or Cuyahoga County sought
 6 permission to spend dollars beyond their
 7 approved budget on a need not related to
 8 opioids?
 9 MR. SOBOL: Objection. Asked
 10 and answered.
 11 You may give an answer in any
 12 form that you'd like.
 13 THE WITNESS: I see this
 14 question as being slightly different.
 15 It's also a general question.
 16 The difference here is, it's
 17 the non-related activities as opposed
 18 to the opioid-related activities, if
 19 I'm following.
 20 QUESTIONS BY MR. KEYES:
 21 Q. Correct.
 22 A. Okay. And it's also an
 23 important question, one I want to make sure I
 24 give a thorough answer to.
 25 In order for me to fulfill my

1 assignment in this report, which is to
 2 identify the opportunity cost of the funds
 3 devoted to opioid-related activities, it was
 4 sufficient for me to -- in each county, for
 5 each division, for each year, to identify the
 6 funds that were spent on opioid-related
 7 activities for that year.
 8 I did not need to know what
 9 might else have been done with those funds
 10 had their spending not taken place. So it
 11 wasn't necessary for me to know whether the
 12 divisions, in the years and the counties, had
 13 made some application for additional funds.
 14 The money spent on the
 15 opioid-related crisis is a very common sense
 16 measure of opportunity costs. If they spend
 17 \$200,000 on opioid-related activities and
 18 they didn't have to spend that money, they
 19 would have had \$200,000 to spend on something
 20 else.
 21 That's, you know, in short what
 22 I did.
 23 Q. When you said in your prior
 24 answer that it wasn't necessary to do it, you
 25 were explaining why you did not do it,

1 correct?

2 MR. SOBOL: Objection. Asked

3 and answered.

4 THE WITNESS: Well, I was

5 explaining some of the basis for that,

6 that -- what opportunity cost was,

7 what was and was not necessary for me

8 to determine that. You know, I think

9 it's important for the reader or the

10 viewer to hear that.

11 QUESTIONS BY MR. KEYES:

12 Q. Did you identify any instance

13 where at any point in time between 2006 and

14 2018 any of the affected divisions for either

15 Summit County or Cuyahoga County sought

16 permission to spend dollars beyond their

17 approved budget on a need related to or not

18 related to opioids?

19 MR. SOBOL: Objection. Asked

20 and answered.

21 You may answer.

22 THE WITNESS: Truthfully -- of

23 course, I've been truthful all

24 morning, but I don't -- this seems to

25 be a compound of two other questions

1 that you asked earlier, those -- the

2 request with respect to opioids and

3 the request with respect to other

4 things.

5 QUESTIONS BY MR. KEYES:

6 Q. I asked whether you identified

7 any instance, before I asked whether you

8 investigated, and you told me your reasons

9 for not investigating.

10 A. Oh.

11 Q. Now I'm asking: Did you at any

12 point in this engagement identify any

13 instance, at any point in time between 2006

14 and 2018, when any of the affected divisions

15 for either Summit County or Cuyahoga County

16 requested permission to spend dollars beyond

17 their approved budget, either to meet an

18 opioid-related need or to meet a

19 nonopioid-related need?

20 MR. SOBOL: Objection. Asked

21 and answered and compound.

22 QUESTIONS BY MR. KEYES:

23 Q. Any instance?

24 MR. SOBOL: Objection. Already

25 asked and compound.

1 But you may answer.

2 THE WITNESS: Well, let me give

3 a fresh answer just to avoid the back

4 and forth about whether I've answered

5 it already.

6 It seems like it's an important

7 question, it's a general question, and

8 I want to make sure I give a complete

9 answer to this.

10 What I needed to do to fulfill

11 my assignment was to identify for each

12 division in each county, for all the

13 years involved, what the

14 opioid-related spending was in that

15 division. That's the basis for an

16 economist to determine what the

17 opportunity cost of those funds are.

18 What's not necessary for me to

19 do is to know what else might have

20 happened had those funds not been

21 spent on opioid-related activities.

22 So I didn't need to know

23 whether divisions had submitted budget

24 proposals or what particular other

25 activities they would have done in a

1 hypothetical had the funds not been

2 spent on opioid-related activities.

3 It was sufficient for me to know the

4 magnitude of those funds.

5 And I think it's a very common

6 sense concept that if a division is

7 spending \$200,000 on opioid-related

8 activities in a year, if they don't

9 have to spend that, the \$200,000 would

10 be available for something else.

11 That's really all -- that's the kind

12 of main point I'm making with the idea

13 of opportunity cost.

14 QUESTIONS BY MR. KEYES:

15 Q. Did you find a single example

16 of an affected division saying that it was

17 not able to meet a need because funds had

18 been redirected to cover an opioid-related

19 need?

20 MR. SOBOL: Objection. Asked

21 and answered.

22 THE WITNESS: This is also a

23 pretty general question, and I want to

24 make sure to give a complete answer to

25 the question.

1 In order for me to do my work,
 2 what I needed to do was identify the
 3 opioid-related spending. To an
 4 economist, that opioid-related
 5 spending is opportunity cost. And if
 6 those funds had not been devoted to
 7 opioid-related activities, they could
 8 have been devoted to something else.
 9 I don't need to know what
 10 officials in the divisions might have
 11 identified as their priorities for
 12 those funds but only to -- you know,
 13 only to note that those funds do have
 14 alternative uses. And if \$200,000 is
 15 devoted to opioid-related activities
 16 in a particular division in a
 17 particular year, had those funds not
 18 been used for opioid-related
 19 activities, they would have been
 20 available for something else.
 21 It's not rocket science. It's
 22 pretty straightforward that they spent
 23 \$200,000 on opioids. If they didn't
 24 have to spend that, they would have
 25 had the money for something else.

1 That's the idea of opportunity cost.
 2 QUESTIONS BY MR. KEYES:
 3 Q. Did the Summit County or
 4 Cuyahoga County government incur any injury
 5 because it wasn't able to spend money on
 6 something because it was spending those
 7 dollars on an opioid-related service?
 8 MR. SOBOL: Objection. Asked
 9 and answered and form.
 10 You may answer.
 11 THE WITNESS: Can you clarify
 12 what injury means in this context?
 13 QUESTIONS BY MR. KEYES:
 14 Q. Harm.
 15 A. I thought you might say that.
 16 Q. Did Summit County or Cuyahoga
 17 County government incur any harm because it
 18 wasn't able to spend money on something
 19 because it was spending those dollars on an
 20 opioid-related service?
 21 MR. SOBOL: Objection. Asked
 22 and answered. Form.
 23 THE WITNESS: I know you've
 24 told me injury is the same as harm,
 25 and earlier harm was the same as

1 injury. It's a little unclear to me
 2 what that means in this context.
 3 QUESTIONS BY MR. KEYES:
 4 Q. Are you offering any opinion
 5 that Summit County or Cuyahoga County
 6 suffered any injury or harm because it wasn't
 7 able to spend money on something because it
 8 was spending that money on an opioid-related
 9 service?
 10 MR. SOBOL: Objection. Asked
 11 and answered.
 12 THE WITNESS: I think I can at
 13 least somewhat address your question,
 14 and if I'm missing in my answer, then
 15 please let me know.
 16 It's also a very general
 17 question, and it sounds like an
 18 important question to me, so I want to
 19 be sure to give a complete answer to
 20 the question.
 21 What I needed to do in my
 22 report was to identify the opportunity
 23 cost of funds that were devoted to
 24 opioid-related activity, and that's
 25 what I did in my report.

1 It was not necessary for me to
 2 identify what other activities the
 3 funds would have been spent on or what
 4 the value of those other activities
 5 were; only to note that there are
 6 alternative uses for the funds that
 7 were devoted to opioid-related
 8 activities, and the officials in the
 9 division would have done something
 10 else with the money.
 11 And so an economist is asked:
 12 What is the metric or the measure of
 13 those opportunity costs?
 14 And it's a very natural,
 15 down-the-middle-of-the-plate,
 16 not-rocket-science part of economics,
 17 which is, that if a household spends
 18 \$75 on a car repair or a division
 19 spends \$200,000 on an opioid-related
 20 activity, that is the opportunity cost
 21 of those funds.
 22 That told me what I needed to
 23 know, and that's what I did.
 24 QUESTIONS BY MR. KEYES:
 25 Q. Now, Professor McGuire, you

1 know, you've said that, I bet, a few hundred
 2 times between last Tuesday and today. And
 3 you're an expert for the plaintiffs, and I'm
 4 entitled to probe whether you're offering an
 5 opinion or not.

6 So this question is a yes or no
 7 question, and I am asking you to answer it
 8 yes or no, and then you can provide whatever
 9 explanation you think is appropriate.

10 Are you offering an opinion
 11 that Summit County or Cuyahoga County
 12 suffered any injury or harm because the
 13 county wasn't able to spend money on
 14 something else because it was spending money
 15 on opioid-related services?

16 MR. SOBOL: Objection, first,
 17 to the speech. I'm not sure if in the
 18 question you intend the witness to
 19 adopt your speech or not.

20 Objection to the form, because
 21 you haven't defined injury or harm.

22 And compound.

23 THE WITNESS: Well, I have been
 24 attempting to answer your question as
 25 clearly and as completely as I can in

1 the order in which I think it's most
 2 informative to provide the
 3 information.

4 And that order starts with what
 5 was needed for me in order to complete
 6 my assignment. And then when I go on
 7 to say -- that's what I need to know.
 8 Then I say it was not necessary for me
 9 to investigate that.

10 I think -- I didn't mean that
 11 to not be answering your question.

12 When I say it wasn't necessary for me
 13 to investigate, then I didn't
 14 investigate it.

15 QUESTIONS BY MR. KEYES:

16 Q. So you did not investigate
 17 whether either Summit County or Cuyahoga
 18 County suffered any injury or harm because
 19 they spent money on opioid-related services
 20 rather than something else --

21 MR. SOBOL: Objection.

22 QUESTIONS BY MR. KEYES:

23 Q. -- correct?

24 MR. SOBOL: Objection. Asked
 25 and answered.

1 Again, you may answer in any
 2 format you'd like, despite the speech
 3 by counsel.

4 THE WITNESS: Okay. This is
 5 returning to that very general and, it
 6 seems to me, potentially important
 7 question; that I think it's important
 8 for a viewer or a reader to understand
 9 what I did and why I did it.

10 And what I did in order to
 11 fulfill my assignment was to identify
 12 the funds that were devoted to
 13 opioid-related activities. That's
 14 what corresponds to the tried and
 15 true, well-accepted, down-the-middle-
 16 of-the-plate concept of opportunity
 17 cost.

18 The opportunity cost of those
 19 funds can be identified and measured
 20 without investigating what a
 21 particular division in a particular
 22 county in a particular year would have
 23 done in an alternative world in which
 24 those funds were not devoted to
 25 opioid-related crises.

1 So when I come up with a
 2 measure \$200,000 were devoted to
 3 opioid-related activities in a
 4 division in a year, that tells me what
 5 I need know. I don't need to, and I
 6 didn't investigate, the particulars of
 7 what else they would have done with
 8 the funds.

9 QUESTIONS BY MR. KEYES:

10 Q. You identify that \$200,000 as
 11 an opportunity cost.

12 MR. SOBOL: Objection.

13 Is there a question?

14 QUESTIONS BY MR. KEYES:

15 Q. Correct?

16 A. Yes.

17 Q. And you are not offering an
 18 opinion that that \$200,000 is a harm or an
 19 injury to either Summit County or Cuyahoga
 20 County, correct?

21 MR. SOBOL: Objection. Asked
 22 and answered.

23 THE WITNESS: Well, you're
 24 coming back to the harm and injury,
 25 and you say harm is injury, injury is

1 harm. Neither of those are very
2 helpful to me as an economist.
3 And given the nature of this
4 question, could you please clarify
5 what harm and injury means in this
6 context?
7 QUESTIONS BY MR. KEYES:
8 Q. Are you saying that harm is not
9 meaningful to you as an economist?
10 MR. SOBOL: Objection.
11 THE WITNESS: I'm saying in
12 this context, I'm not sure what you're
13 asking.
14 QUESTIONS BY MR. KEYES:
15 Q. In the context of this
16 engagement, are you saying that harm is not a
17 meaningful concept to you?
18 MR. SOBOL: Objection. Asked
19 and answered.
20 THE WITNESS: I'm saying in the
21 context of this question, I'm not sure
22 what you're referring to.
23 QUESTIONS BY MR. KEYES:
24 Q. Well, do you have an
25 understanding of what harm means in the

1 context of the opinions that you're offering
2 regarding damages here?
3 A. I understand what damages are.
4 I understand what opportunity costs are, as I
5 used it in my report. But I'm -- if that's
6 what you mean, if you mean harm equals
7 damages, then please tell me. If you mean
8 harm equals opportunity cost, please tell me.
9 If you mean harm equals something else, then
10 please tell me that.
11 Q. Well, my question was: Do you
12 have an understanding of what harm means in
13 the context of the opinions that you're
14 offering regarding damages here?
15 MR. SOBOL: Objection. Asked
16 and answered.
17 THE WITNESS: I don't have
18 anything to add. This is -- I'm not
19 meaning to be evasive. I'm just
20 asking: In this context, what do you
21 mean by harm?
22 I studied damages. I studied
23 opportunity costs. Is there something
24 else?
25

1 QUESTIONS BY MR. KEYES:
2 Q. Did you study harm?
3 MR. SOBOL: Objection. Asked
4 and answered.
5 THE WITNESS: Without telling
6 me what it is, I can't tell you.
7 QUESTIONS BY MR. KEYES:
8 Q. Did you study any harm?
9 MR. SOBOL: Objection. Asked
10 and answered.
11 THE WITNESS: Without you
12 telling me what you mean by the word,
13 I can't tell you.
14 QUESTIONS BY MR. KEYES:
15 Q. Well, sir, you say on page 4 of
16 your report, you say, quote, "I refer to the
17 adverse health, public welfare, public health
18 and criminal justice consequences of the
19 opioid epidemic as harms."
20 You use the term "harms,"
21 right? That's in your report.
22 A. This is Exhibit 1?
23 Q. Yes, page 4.
24 A. One second.
25 Q. Middle of the page, two

1 sentences before you begin paragraph 7, you
2 say, "I refer to adverse health, public
3 health, public welfare and criminal justice
4 consequences of the opioid epidemic as
5 harms."
6 Do you see that language?
7 A. I see that, yes.
8 Q. You use the term "harms."
9 MR. SOBOL: Objection.
10 QUESTIONS BY MR. KEYES:
11 Q. Okay?
12 MR. SOBOL: Objection. Asked
13 and answered.
14 You may answer.
15 QUESTIONS BY MR. KEYES:
16 Q. So when you said before you
17 don't know what harm means, I'm trying to
18 reconcile that with the statements in your
19 own report.
20 MR. SOBOL: There's no question
21 before you.
22 QUESTIONS BY MR. KEYES:
23 Q. So are you still saying you
24 don't know what harm means --
25 MR. SOBOL: Objection.

1 QUESTIONS BY MR. KEYES:

2 Q. -- in the context of this case?

3 MR. SOBOL: Objection.

4 Misleading, because it

5 mischaracterizes his previous

6 testimony.

7 If you'd like to ask him what

8 is meant by that section of his report

9 regarding the plural harms, you may.

10 THE WITNESS: I'm sorry, what

11 question is pending?

12 QUESTIONS BY MR. KEYES:

13 Q. So are you still saying you

14 don't know what harm means in the context of

15 this case?

16 MR. SOBOL: Objection. Asked

17 and answered.

18 THE WITNESS: I think what I

19 said was I didn't understand the way

20 you were using harm in the question.

21 QUESTIONS BY MR. KEYES:

22 Q. Did you investigate whether

23 Summit County or Cuyahoga County governments

24 suffered any injury or harm because they

25 spent money on opioid-related services rather

1 than something else?

2 MR. SOBOL: Objection. Asked

3 and answered.

4 THE WITNESS: I remember that

5 question, and I believe my response

6 was to request from you a

7 clarification of what you mean in your

8 question by harms and injury.

9 QUESTIONS BY MR. KEYES:

10 Q. Using the concept of harms that

11 you discuss in your report, did you

12 investigate whether Summit County or Cuyahoga

13 County governments suffered any injury or

14 harm because they spent money on

15 opioid-related services rather than something

16 else?

17 A. Okay.

18 MR. SOBOL: Objection.

19 Compound.

20 You can answer.

21 THE WITNESS: All right. So

22 now we're referring to my report,

23 page 4, where I say, "I refer to the

24 adverse health, public health, public

25 welfare and criminal justice system

1 consequences of the opioid epidemic as

2 harms."

3 So if I'm interpreting your

4 question correctly, when you say "the

5 county governments," were they

6 affected, governments don't have

7 health. Governments don't have

8 welfare. They are engaged in

9 activities related to public health,

10 health and public welfare that

11 involves spending money on those

12 things.

13 So if you're asking me as part

14 of your question, did the health of

15 county government, was that harmed by

16 opioid-related activities, that

17 question doesn't make sense to me.

18 If you're asking me with

19 respect to the activities of the

20 county governments, was their spending

21 on health or public health affected,

22 that question does make sense to me,

23 and I address it in this report in the

24 form of studying opportunity cost.

25

1 QUESTIONS BY MR. KEYES:

2 Q. When you refer to adverse

3 health, public health, public welfare and

4 criminal justice consequences of the opioid

5 epidemic as harms, are you saying that those

6 are harms suffered by Summit County or

7 Cuyahoga County governments?

8 A. Governments?

9 Well, I tried to address this

10 in my previous answer. And if we take just

11 the first of these, health, if what you mean

12 by affecting the health of a county

13 government, that doesn't make sense to me

14 because governments don't have health.

15 What governments do is spend

16 money on things. And if -- let me put it

17 this way. With respect to the issue of

18 whether the opioid epidemic caused government

19 to spend money on health, then that's what my

20 report is about.

21 Q. Right. Right.

22 So when you refer in the

23 sentence to adverse health, public health,

24 public welfare and criminal justice

25 consequences of the opioid epidemic as harms,

1 you are not referring to them as harms to the
 2 Summit County or Cuyahoga County governments,
 3 correct?
 4 MR. SOBOL: Objection. Asked
 5 and answered.
 6 THE WITNESS: No, that's not
 7 what I said.
 8 QUESTIONS BY MR. KEYES:
 9 Q. You talked about cost
 10 consequences of the harms. I'm asking about
 11 the harms that you refer to. Are those harms
 12 to the Cuyahoga County or Summit County
 13 governments?
 14 MR. SOBOL: Objection. Asked
 15 and answered.
 16 THE WITNESS: I don't have too
 17 much -- I don't have anything new to
 18 say about this, but let me say what I
 19 said again.
 20 With respect to health and
 21 whether there were any harms
 22 associated with health to county
 23 governments, that doesn't make sense
 24 to me as a question. Governments
 25 don't have health. What governments

1 do is spend money on things and --
 2 including spending money on health.
 3 So to the extent that your
 4 question is about harms in the form of
 5 the opioid crisis leading to spending
 6 consequences for the county
 7 governments, I do address that in my
 8 report at some length.
 9 QUESTIONS BY MR. KEYES:
 10 Q. When you then refer to the cost
 11 consequences of harms to the bellwether
 12 governments, you are talking about the cost
 13 consequences to the governments, not the
 14 harms to the governments, correct?
 15 MR. SOBOL: Objection. Asked
 16 and answered.
 17 THE WITNESS: I don't know.
 18 You're attempting to sort of dissect
 19 these words. I'm not -- maybe you
 20 could break it down or something. I'm
 21 not really following.
 22 QUESTIONS BY MR. KEYES:
 23 Q. I'm looking at two sentences in
 24 your report.
 25 A. Yes.

1 Q. You say, "Finally, upon
 2 instruction from counsel, I refer to the cost
 3 consequences of harms to the bellwether
 4 governments due to defendants' misconduct as
 5 damages."
 6 Do you see that sentence?
 7 A. I see that, yeah.
 8 Q. Did you write that sentence?
 9 A. I absolutely wrote that
 10 sentence.
 11 Q. Did you write the prior
 12 sentence?
 13 A. I absolutely wrote the prior
 14 sentence.
 15 Q. You told me already you wrote
 16 the whole report, correct?
 17 A. I did, yes.
 18 Q. Okay. So focusing on this
 19 sentence, "I refer to the cost consequences
 20 of harms to the bellwether governments."
 21 Do you see that phrase?
 22 A. I see that.
 23 Q. You are talking about the cost
 24 consequences to the bellwether governments,
 25 not the harms to the governments, correct?

1 MR. SOBOL: Objection. Asked
 2 and answered.
 3 THE WITNESS: I'm -- well, the
 4 sentence says what I mean. I'm not --
 5 QUESTIONS BY MR. KEYES:
 6 Q. You're talking about the cost
 7 consequences of harms, which consequences you
 8 say are borne by the governments.
 9 MR. SOBOL: Objection.
 10 THE WITNESS: The sentence
 11 says, "I refer to the cost
 12 consequences of harms" as damages.
 13 QUESTIONS BY MR. KEYES:
 14 Q. Right.
 15 And those cost --
 16 A. Okay.
 17 Q. Those cost consequences that
 18 you're referring to are what you've
 19 identified as the opportunity costs?
 20 MR. SOBOL: Objection. Asked
 21 and answered.
 22 THE WITNESS: That's generally
 23 correct, yes.
 24 QUESTIONS BY MR. KEYES:
 25 Q. Okay. And those are

1 opportunity costs that you say were borne by
 2 Summit County and Cuyahoga County government
 3 as a result of the harms that you say result
 4 to the communities of the opioid epidemic?
 5 MR. SOBOL: Objection.
 6 THE WITNESS: Well, you're
 7 reading things that I didn't write
 8 here.
 9 QUESTIONS BY MR. KEYES:
 10 Q. I'm asking you a question about
 11 your opinions.
 12 A. Okay. I thought we were
 13 following along with the text here, but,
 14 sorry. Hit me with a question.
 15 Q. Well, you told me you couldn't
 16 explain the texts; you could only just keep
 17 referring to the text. So I'm expanding my
 18 questioning to give you different words to
 19 use.
 20 You said you have identified
 21 the opportunity costs as the cost
 22 consequences, correct?
 23 A. I said that, yes.
 24 MR. SOBOL: Objection. Asked
 25 and answered.

1 QUESTIONS BY MR. KEYES:
 2 Q. And those are the cost
 3 consequences of harms, correct?
 4 MR. SOBOL: Objection. Asked
 5 and answered.
 6 Or asked and not understood.
 7 But either way, I object.
 8 THE WITNESS: I think that's
 9 correct, yeah.
 10 QUESTIONS BY MR. KEYES:
 11 Q. And those are the cost
 12 consequences borne by the Summit County and
 13 Cuyahoga County governments, correct?
 14 A. Yes.
 15 Q. And those are the cost
 16 consequences of harms that you've identified
 17 as adverse health, public health, public
 18 welfare and criminal justice consequences of
 19 the opioid epidemic, correct?
 20 MR. SOBOL: Objection.
 21 THE WITNESS: I think so.
 22 QUESTIONS BY MR. KEYES:
 23 Q. And those are the harms that
 24 you said didn't make any sense as being harms
 25 suffered by the Cuyahoga County or Summit

1 County government, correct?
 2 MR. SOBOL: Objection.
 3 Mischaracterizes the testimony.
 4 THE WITNESS: No, that's not
 5 what I said.
 6 QUESTIONS BY MR. KEYES:
 7 Q. When I asked you before when
 8 you referred to these adverse health, public
 9 health, public welfare and criminal justice
 10 consequences of the opioid epidemic that you
 11 describe as harms, and so are those harms
 12 incurred or suffered by Cuyahoga County or
 13 Summit County, you said that didn't make any
 14 sense to you, right?
 15 A. Well, when you talk about the
 16 Summit or Cuyahoga County governments, there
 17 was a sense in which it did not and a sense
 18 in which it did that I tried to explain in my
 19 answer.
 20 Q. Have you visited Summit County
 21 at any point in connection with your work on
 22 this engagement?
 23 A. I don't think I have, no.
 24 Q. Have you visited Cuyahoga
 25 County at any point in connection with your

1 work on this engagement?
 2 A. Yes.
 3 Q. When did you visit Cuyahoga
 4 County?
 5 A. Sometime in July.
 6 Q. Is that when you met with
 7 officials from Cleveland?
 8 A. Yes.
 9 Q. Did you do anything else on
 10 that trip in connection with this engagement,
 11 other than meet with officials from
 12 Cleveland?
 13 A. Not that I recall.
 14 Q. Have you visited Summit County
 15 for any reason since you were hired on this
 16 engagement?
 17 A. No, I don't think so.
 18 Q. Have you visited --
 19 A. I'm sure I didn't. I haven't
 20 been to Summit County.
 21 Q. Have you visited Cuyahoga
 22 County for any reason since you were hired on
 23 this engagement besides your meeting with the
 24 Cleveland officials?
 25 A. No, I have not.

1 Q. Have you ever been to Summit
2 County?

3 A. Ever? Oh, gosh. I visited a
4 number of counties in Ohio in some other work
5 I did for the Ohio government. I know I
6 would have been to Columbus. There were
7 others. I can't remember which of the others
8 I visited.

9 Q. Other than your visit with the
10 Cleveland officials in July, have you ever
11 visited Cuyahoga County?

12 A. Well, in some previous work I
13 did for the State of Ohio, I did some
14 traveling, and it was at least Columbus, but
15 I don't remember where else I would have
16 visited.

17 Q. Is Columbus in Cuyahoga County?

18 A. No, it's not.

19 Q. What county is it in?

20 A. Columbus. Is it Columbus
21 County? Sometimes they have the same name.

22 Q. Do you know?

23 A. I don't recall the county.

24 Q. When were you first engaged on
25 this case?

1 A. Oh, in this case?

2 Q. Yes.

3 A. You mean not the thing I was
4 referring to in the past, but --

5 Q. This case.

6 A. -- this case.

7 It would have been, I think,
8 maybe late May or June of 2018.

9 Q. And when did you first start
10 working with Compass Lexecon in this
11 engagement?

12 A. Soon after that.

13 Q. So also May or June of 2018?

14 A. Probably June.

15 Q. Have you ever used a
16 prescription opioid?

17 A. Yes, I have.

18 Q. How many times?

19 A. What I -- this was in
20 connection with hip surgery. And I was given
21 some opioids to take home, which are
22 prescription opioids, that I took for about
23 two days, and then I stopped taking them.

24 Q. What was the particular opioid
25 that you were prescribed?

1 A. I don't remember.

2 Q. Was it prescribed by your
3 physician?

4 A. Well, it was given to me -- you
5 know, I don't remember if I had it leaving
6 the hospital, whether I had to pick it up. I
7 don't remember. But it was prescribed by a
8 physician in either case. It would have
9 been, I think, prescribed by my surgeon.

10 Q. And you took it for two days?

11 A. Yes.

12 Q. What was the specific drug?

13 A. I don't remember.

14 MR. SOBOL: Objection. Asked
15 and answered.

16 QUESTIONS BY MR. KEYES:

17 Q. And why did you take it for
18 those first two days?

19 A. Because it was prescribed for
20 me by my doctor.

21 Q. What was it prescribed to you
22 to do, as you understood it?

23 A. My understanding was that it
24 was prescribed in order to deal with pain.

25 Q. Did you have pain before you

1 took it?

2 A. I had a lot of pain before I
3 had my surgery, and then, yeah, there was
4 kind of pain throughout the process, yeah.

5 Q. Did the prescription opioid
6 that you took help with your pain?

7 A. Well, you know, it's hard to
8 know. You're asking, you know, if someone
9 takes a drug -- say you take an
10 antidepressant. Did your antidepressant
11 help? It's hard to know. It's not an
12 individual question.

13 Maybe you don't -- still don't
14 feel that great, but how would you have felt
15 had you not taken the pill? You don't really
16 know.

17 And so in this case I had some
18 pain. If you asked me the counterfactual
19 question of how much pain I would have had
20 without the opioid, I really can't tell you.

21 Q. You said you stopped taking it
22 after two days?

23 A. Yes.

24 Q. Did you have pain after you
25 stopped taking it?

1 A. I had pain throughout the
 2 entire process, yes.
 3 Q. Did your pain increase after
 4 you stopped taking the prescription opioid?
 5 A. No, it didn't.
 6 Q. Did you take something else to
 7 address the pain when you stopped taking the
 8 prescription opioid?
 9 A. I also was, I think,
 10 requested -- or recommended to take, I think,
 11 ibuprofen. And I don't remember whether I
 12 just continued on the regimen that was
 13 recommended to me or whether I increased that
 14 in response. I don't remember.
 15 Q. Why did you stop taking the
 16 prescription opioid after two days?
 17 A. I thought it was prudent,
 18 frankly.
 19 Q. Why?
 20 A. Because opioids are dangerous
 21 drugs, and I didn't want to take it any
 22 longer than necessary.
 23 Q. Did you develop an addiction to
 24 opioids?
 25 A. No.

1 Q. How did you know that opioids
 2 are dangerous drugs and you shouldn't take it
 3 any longer than necessary?
 4 A. I was just aware of that from
 5 my work as a health economist. This would
 6 have been, you know, two or three years ago,
 7 so well before I got involved in this matter.
 8 Q. Is this the only time you used
 9 a prescription opioid?
 10 A. As far as I know, yes.
 11 Q. You can't think of anything
 12 before the hip surgery or after the hip
 13 surgery where you used a prescription opioid?
 14 MR. SOBOL: Objection. Asked
 15 and answered.
 16 THE WITNESS: No, I didn't use
 17 prescription opioids otherwise.
 18 QUESTIONS BY MR. KEYES:
 19 Q. Regarding your quantification
 20 of the opportunity costs in this case, do I
 21 understand you correctly that if either
 22 county government had decided to spend its
 23 entire budget on opioid-related services,
 24 then the opportunity costs that you describe
 25 as damages here would be the entire budget of

1 the county?
 2 MR. SOBOL: Objection. Asked
 3 and answered.
 4 THE WITNESS: It's kind of a
 5 funny question, that among all the
 6 things any of these divisions -- or in
 7 this case I think you're asking about
 8 the entire government -- would have
 9 spent only on opioid-related
 10 activities, so long as there are
 11 alternative uses for those funds, even
 12 if the government, in its wisdom,
 13 decides only to devote the funds to
 14 opioid-related activities, so long as
 15 there are other things the government
 16 could have done, then it's -- unless
 17 I'm misunderstanding your question,
 18 then, yes, it's the right measure of
 19 opportunity cost.
 20 QUESTIONS BY MR. KEYES:
 21 Q. And do I understand that under
 22 your approach in quantifying the opportunity
 23 costs, that if the county government had
 24 decided to spend nothing on opioid-related
 25 services, then there would be no opportunity

1 costs?
 2 MR. SOBOL: Objection.
 3 THE WITNESS: Of course this
 4 is --
 5 QUESTIONS BY MR. KEYES:
 6 Q. And no damages using your
 7 formulation?
 8 A. Well, this is also a funny
 9 question, that they would have spent nothing.
 10 But in the case in which they literally spent
 11 nothing on opioid-related activities, then
 12 there was no sacrifice of other uses of the
 13 funds. So the appropriate measure of
 14 opportunity cost in that case would be zero.
 15 Q. And under your approach to
 16 quantifying opportunity cost, if the county
 17 government had decided to spend 50 percent of
 18 its total budget on opioid-related services,
 19 then you would say the damages are 50 percent
 20 of the budget?
 21 MR. SOBOL: Objection. Asked
 22 and answered.
 23 QUESTIONS BY MR. KEYES:
 24 Q. Is that correct?
 25 MR. SOBOL: You may answer, but

1 I do object.

2 THE WITNESS: Well, I think

3 I've spanned the responsibilities from

4 zero to 100 percent, and 50 percent

5 isn't qualitatively different.

6 If they spent -- and let's just

7 use a number. If they spent

8 \$10 million, it represents 50 percent

9 of their budget on opioid-related

10 activities, then that's the right

11 measure of opportunity cost.

12 QUESTIONS BY MR. KEYES:

13 Q. And so under your approach to

14 measuring opportunity costs, which you say

15 are damages, the value of the damages depends

16 entirely on how much money the county decides

17 to spend on opioid-related services, using

18 your logic, right?

19 MR. SOBOL: Objection. Form.

20 You may answer.

21 THE WITNESS: Well, in my

22 report I'm applying the, you know,

23 well-accepted concept of opportunity

24 cost. And, yes, it kind of makes

25 sense as a -- you know, just from

1 common sense and certainly is

2 well-supported by economics that if a

3 household, or a government in this

4 case, spends a hundred dollars on

5 something, then they would have had

6 that hundred dollars to spend on

7 something else, and that's the right

8 measure of opportunity cost.

9 Unless I'm missing some

10 subtlety in your question, then the

11 answer is, yes, that's the opportunity

12 cost of the funds.

13 QUESTIONS BY MR. KEYES:

14 Q. And you equate opportunity cost

15 with damages based on the instruction that

16 you received from plaintiffs' counsel,

17 correct?

18 A. Well, the opportunity cost is

19 an economic concept, and so that's -- that

20 comes from me, you know, what is the

21 opportunity cost of these funds. We

22 discussed that today.

23 I put damages in quotes because

24 that's -- on instruction from counsel, I

25 refer to them as damages.

1 Q. Because -- I want to make sure.

2 You quantify opportunity costs, right?

3 A. Yes.

4 Q. And you say the opportunity

5 costs are the cost consequences to the Summit

6 County and Cuyahoga County governments as a

7 result of these harms resulting from the

8 opioid epidemic, right?

9 MR. SOBOL: Objection. Asked

10 and answered.

11 THE WITNESS: I think that's

12 correct, yes.

13 QUESTIONS BY MR. KEYES:

14 Q. And you call those opportunity

15 costs damages because you were instructed to

16 do so by counsel, correct?

17 A. Let me just make sure.

18 Upon instruction from counsel,

19 I refer to cost consequences as damages, yes.

20 Q. Going back to your

21 prescription, what was -- how many days was

22 your prescription for for the prescription

23 opioid?

24 A. Longer, but I don't remember.

25 Q. What do you mean by "longer"?

1 Seven days?

2 A. More than two.

3 Q. 30 days? Different?

4 A. I don't know. I don't

5 remember.

6 Q. When you stopped taking the

7 prescription opioid after two days, did you

8 have additional pills left over?

9 A. Yes.

10 Q. What did you do with them?

11 A. Threw them out.

12 Q. Where?

13 A. In the trash.

14 Q. Okay. How did you know to do

15 that?

16 MR. SOBOL: Objection. Assumes

17 a fact not in evidence.

18 THE WITNESS: Well, I thought

19 it was --

20 MR. KEYES: He just said he

21 threw them out.

22 THE WITNESS: Yeah.

23 MR. KEYES: I'm asking, how did

24 he know to throw them out.

25 MR. SOBOL: But that assumes

1 that he knew to throw them out, rather
 2 than something else.
 3 QUESTIONS BY MR. KEYES:
 4 Q. Did you throw them out on
 5 purpose or by accident?
 6 A. They slipped out of my hand and
 7 went in the trash, and they were gone.
 8 Q. No, for real. Did you throw
 9 them out by accident --
 10 A. No, I didn't.
 11 Q. -- or on purpose?
 12 A. I threw them out on purpose.
 13 Q. Okay. How did you know to
 14 throw them out on purpose?
 15 A. Well, as I mentioned a few
 16 minutes ago, they're risky drugs, and I
 17 thought that whatever pain I had was already
 18 well-managed, that it didn't make sense to
 19 pop these pills.
 20 Q. If you turn to page 44 of your
 21 report.
 22 A. Yes.
 23 THE WITNESS: I'd like to get
 24 some water. We don't need to take a
 25 break, but just get some water.

1 MR. KEYES: Well, why don't we
 2 take a break then.
 3 VIDEOGRAPHER: The time is
 4 11:56 a.m., and we're off the record.
 5 (Off the record at 11:56 a.m.)
 6 VIDEOGRAPHER: The time is
 7 12:10 p.m., and we're on the record.
 8 QUESTIONS BY MR. KEYES:
 9 Q. Professor McGuire, do you have
 10 Exhibit Number 1 in front of you, which is
 11 your report on damages?
 12 A. Yes, I do.
 13 Q. And are you at page 44?
 14 A. Yes, I am.
 15 Q. And in paragraph 76, you
 16 identify what you claim are damages for
 17 Cuyahoga County under Approaches 1 and 2?
 18 A. That's correct.
 19 Q. And you set forth those damages
 20 in Table 4.12?
 21 A. That's correct.
 22 Q. And in paragraph 77, you
 23 identify what you claim are damages for
 24 Summit County under Approaches 1 and 2?
 25 A. That's correct.

1 Q. And you set forth those damages
 2 in Table 4.13?
 3 A. That's correct.
 4 Q. And then you aggregate those
 5 numbers in Table 4.14 on page 46, correct?
 6 A. That's correct.
 7 Q. Are those the damages
 8 calculations that you performed?
 9 A. Yes.
 10 Q. Did you perform any other
 11 damages calculations that are not set forth
 12 in these tables?
 13 MR. SOBOL: You mean drafts?
 14 MR. KEYES: Of any sort.
 15 MR. SOBOL: Well, then I
 16 instruct him not to answer.
 17 QUESTIONS BY MR. KEYES:
 18 Q. Well, did you perform any other
 19 damage calculations that are not set forth in
 20 these tables where you are offering the
 21 opinion that those are damages calculations?
 22 A. This is my opinion. There's no
 23 opinions I have other than what you see here.
 24 Q. Okay. So the opinions that you
 25 set forth regarding damages on pages 44, 45

1 and 46 are the only opinions you have on
 2 damages?
 3 MR. SOBOL: Objection.
 4 QUESTIONS BY MR. KEYES:
 5 Q. The quantification of damages?
 6 MR. SOBOL: Objection.
 7 THE WITNESS: I believe that's
 8 correct, yes.
 9 QUESTIONS BY MR. KEYES:
 10 Q. Okay. Then would you turn to
 11 Appendix 4.E of your report. It's towards
 12 the very back.
 13 A. Okay. Okay.
 14 Q. Are you on Appendix 4.E?
 15 A. I am, yes.
 16 Q. Okay. 4.E is titled "Damages
 17 Due to Shipments."
 18 What is Appendix 4.E showing,
 19 if you know?
 20 A. I do know. I tried to explain
 21 this in the first couple of sentences there.
 22 They show the -- as the title
 23 of the tables say, the share of harms due to
 24 all shipments.
 25 Q. I must be confused then,

1 because I asked you earlier whether the
 2 opinions that you set forth regarding damages
 3 on pages 44, 45 and 46 are the only opinions
 4 you have quantifying damages, and you said,
 5 quote, "I believe that's correct, yes."
 6 So what is Appendix 4.E
 7 intended to show --
 8 A. Okay.
 9 Q. -- if not quantification of
 10 damages?
 11 A. Okay.
 12 MR. SOBOL: Objection to the
 13 form.
 14 You can answer.
 15 THE WITNESS: This appendix was
 16 prepared in order to -- just one
 17 second.
 18 All right. These were prepared
 19 as -- in response to what I needed for
 20 the public nuisance report.
 21 QUESTIONS BY MR. KEYES:
 22 Q. What do you mean?
 23 A. I mean in the public nuisance
 24 report, which we haven't talked about yet,
 25 but I think you obviously know what I'm

1 referring to, the charge there was slightly
 2 different. It was in order to assess harms
 3 and quantify the harms to the counties from
 4 the opioid crisis, from -- due to the
 5 shipments, and these tables fed into those
 6 opinions.
 7 Q. And when you say "quantify the
 8 harms to the counties," you're talking about
 9 to the communities or individuals in the
 10 communities, not the governments, correct?
 11 A. It's not restricted to the
 12 governments.
 13 Q. Okay. So how are the
 14 calculations in Appendix 4.E different than
 15 the calculations on pages 44, 45 and 46 in
 16 your report?
 17 A. Okay. These are different in
 18 that they don't take account of the estimates
 19 from the Rosenthal report of the share of
 20 shipments due to misconduct.
 21 MR. SOBOL: Let the record
 22 reflect that the "these" he was
 23 pointing to, Appendix 4.E.
 24 THE WITNESS: The tables in
 25 Appendix 4.E that we've been

1 discussing.
 2 QUESTIONS BY MR. KEYES:
 3 Q. And so which set of
 4 calculations do you intend to show a jury:
 5 the ones in pages 44 through 46 of your
 6 report or the calculations in Appendix 4.E?
 7 MR. SOBOL: Objection. Form.
 8 THE WITNESS: Well, I think it
 9 depends on -- in response to what
 10 question I'm asked.
 11 QUESTIONS BY MR. KEYES:
 12 Q. Have you performed any other
 13 what you call "damages calculations" besides
 14 Appendix 4.E and what you list in pages 44
 15 through 46 in your report?
 16 MR. SOBOL: Excluding drafts?
 17 MR. KEYES: Excluding drafts.
 18 THE WITNESS: Excluding drafts,
 19 no, I don't think so.
 20 QUESTIONS BY MR. KEYES:
 21 Q. Okay. Would you turn to
 22 Appendix 4.F.
 23 You told me that the only
 24 damages calculations you performed were
 25 pages 44 through 46. You said there were no

1 others.
 2 Then I showed you Appendix 4.E,
 3 and you said, yes, those are calculations
 4 needed for the nuisance report.
 5 I said: Did you perform any
 6 other calculations of what you contend to be
 7 damages.
 8 You said: No.
 9 What is Appendix 4.F then?
 10 MR. SOBOL: Objection. I don't
 11 think he's asking you, but maybe he
 12 is, to adopt his rendition of the
 13 prior testimony, which I object to,
 14 with the last sentence or -- you can
 15 answer: What is Appendix 4.F?
 16 THE WITNESS: Appendix 4.F is a
 17 illustration of how the methodology
 18 could be applied to a different
 19 question, which would be the share of
 20 misconduct attributable to -- this is
 21 the distributors.
 22 QUESTIONS BY MR. KEYES:
 23 Q. Based on what conduct of the
 24 distributors?
 25 A. That's something that I didn't

1 deal with in my report.

2 Q. Okay. How did you go about

3 arriving at the figures that are in

4 Appendix 4.F?

5 A. This is, again, in the same way

6 as some of the other figures, that these

7 percentages were provided to me, and then I

8 applied them to the potentially affected

9 costs to get an estimate of damages.

10 Q. You say "these percentages."

11 Are you referring to the percentages in Table

12 F.1?

13 A. F.1 and F.2, yes.

14 Q. Okay. What about -- and did

15 you apply those percentages to dollar figures

16 to arrive at the dollars shown in Tables F.3

17 and F.4?

18 A. That's correct, yes.

19 Q. Okay. So did you simply take

20 what you identified as the affected costs and

21 multiply them by the percentages in Table F.1

22 and F.2?

23 MR. SOBOL: Objection.

24 THE WITNESS: Yeah. Yes.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Where did the percentages come

3 from that you used in these calculations and

4 which are set forth in Table F.1 and F.2?

5 A. These came from Cutler report,

6 Appendix 3.J.

7 Q. And how do you know that?

8 A. I looked at it.

9 Q. Where do you cite 3.J? In

10 footnote 1?

11 A. In footnote 1, yeah.

12 Q. So you received these

13 percentages from Professor Cutler.

14 Did you independently arrive at

15 those percentages or just take the ones you

16 had received from Professor Cutler?

17 MR. SOBOL: Object to form.

18 You may answer.

19 THE WITNESS: This was what you

20 would call input from Professor

21 Cutler.

22 QUESTIONS BY MR. KEYES:

23 Q. Did you do anything to test or

24 validate that input, namely the percentages

25 that Professor Cutler provided?

1 A. No, I depended on him for those

2 percentages.

3 Q. What is Table 4 -- I'm sorry,

4 Appendix 4.G?

5 A. Professor Rosenthal conducted

6 her empirical work in two ways, and what 4.G

7 refers to is the same kind of calculations

8 with different Rosenthal estimates.

9 Q. And then did Professor Cutler

10 take those percentages from Professor

11 Rosenthal and do something?

12 A. My understanding of what

13 Professor Cutler did was multiply some things

14 together.

15 Q. What did he multiply, as you

16 understand it?

17 A. The Rosenthal percent times his

18 own percent of harms due to shipments.

19 Rosenthal was misconduct of the shipments.

20 Cutler was shipments due to harms. And to

21 attribute the share of harms due to

22 misconduct, he multiplies those two things

23 together.

24 Q. And then he arrives at a

25 percentage?

1 A. And then he arrives at a

2 percentage.

3 Q. So he starts with percentages

4 derived by Professor Rosenthal, correct?

5 MR. SOBOL: Objection.

6 Go ahead.

7 THE WITNESS: Not maybe start

8 with, but he has them.

9 QUESTIONS BY MR. KEYES:

10 Q. Okay. And what testing of

11 Professor Rosenthal's percentages did

12 Professor Cutler do?

13 MR. SOBOL: Objection. Scope.

14 THE WITNESS: Well, that's

15 really a question for Professor Cutler

16 rather than Tom.

17 QUESTIONS BY MR. KEYES:

18 Q. Do you know what testing, if

19 any, he did?

20 MR. SOBOL: Objection. Scope.

21 THE WITNESS: Well, he would

22 have -- I'm a little reluctant to

23 speak for him subjectively.

24 QUESTIONS BY MR. KEYES:

25 Q. I'm not asking you to speak for

1 him. I'm asking what you know.

2 What do you know about whether

3 Professor Cutler tested the percentages that

4 he received from Professor Rosenthal?

5 MR. SOBOL: Objection. Scope.

6 THE WITNESS: He would have

7 reviewed them and determined that they

8 were reasonable from his perspective.

9 QUESTIONS BY MR. KEYES:

10 Q. You say "would have."

11 Did he do that?

12 A. Yes.

13 MR. SOBOL: Objection. Scope.

14 QUESTIONS BY MR. KEYES:

15 Q. How do you know that?

16 MR. SOBOL: Objection.

17 Just the -- not the content

18 but -- if counsel were present, but

19 the method.

20 THE WITNESS: I'm sorry, I

21 didn't hear the objection.

22 MR. SOBOL: So he just asked

23 you a question. You could either say

24 it was by telephone or you could give

25 the content of the communication.

1 If counsel were there, you're

2 not to testify regarding what the

3 content of the communication was.

4 THE WITNESS: Okay. Yes, there

5 were, you know, more than one meeting

6 in which the analyses were reviewed.

7 QUESTIONS BY MR. KEYES:

8 Q. Okay. And then Professor

9 Cutler separately derived another set of

10 percentages, right?

11 A. That's correct.

12 MR. SOBOL: Objection.

13 QUESTIONS BY MR. KEYES:

14 Q. And did you test that separate

15 second set of percentages?

16 A. In the same sense that I

17 mentioned for Cutler and Rosenthal.

18 Q. Okay. And then you understand

19 that Professor Cutler took the first

20 percentages that he received from Professor

21 Rosenthal and multiplied them by a set of

22 percentages that he had calculated to arrive

23 at a third set of percentages, correct?

24 A. Correct.

25 Q. And that third set of

1 percentages Professor Cutler provided to you?

2 A. Correct.

3 Q. And those are the percentages

4 that you use in Table G.1 and Table G.2?

5 A. Correct.

6 Q. To arrive at your figures?

7 A. Correct.

8 Q. Did you do any testing of the

9 percentages that you received from Professor

10 Cutler in order to do the calculations that

11 you performed in Appendix 4.G?

12 A. Only in the sense that I've

13 mentioned so far.

14 Q. Nothing else, correct?

15 A. Well, it's a pretty general yes

16 answer, but...

17 Q. You prepared a second report on

18 public nuisance, correct?

19 A. That's correct.

20 Q. And you also issued that report

21 on March 25, 2019?

22 A. That's correct.

23 (McGuire Exhibit 6 marked for

24 identification.)

25

1 QUESTIONS BY MR. KEYES:

2 Q. I'm showing you what has been

3 marked as McGuire Exhibit 6.

4 Is this your report?

5 A. Yes, it is.

6 Q. Would you turn to page 81 of

7 McGuire Exhibit 6?

8 Are you there?

9 A. I'm there.

10 Q. There's a signature?

11 A. I see it.

12 Q. Is that your signature?

13 A. Yes, it is.

14 Q. And by that signature did you

15 intend to confirm that this is your report?

16 A. Yes.

17 Q. And it sets forth your

18 opinions?

19 A. That's correct.

20 Q. And your calculations?

21 A. Yes.

22 Q. And your work?

23 A. Yes.

24 Q. And your words?

25 A. Yes.

1 Q. Did you write this opinion?

2 A. Yes, I did.

3 Q. Did anyone else write portions

4 of it for you?

5 A. No.

6 Q. Okay. Who else was involved in

7 the preparation of this report?

8 A. There would have been support

9 staff from the two firms we spoke about last

10 Tuesday: Compass Lexecon and Greylock

11 McKinnon Associates.

12 Q. And who from Compass Lexecon

13 assisted you on this report on public

14 nuisance?

15 A. It would have been Hal Sider,

16 Alice Kaminski, Evan McKay, and someone I

17 forgot to mention last time that I feel a

18 little bad about is Heather Spang, who

19 assisted on both reports. I just...

20 Q. How do you spell Ms. Spang's

21 last name?

22 A. S-p-a-n-g.

23 Q. And what was her role on the

24 damages report, if you forget to mention her

25 last week?

1 A. For a while, she was my first

2 contact if there was something to be done on

3 damages and something she did or she would

4 have enlisted other staff.

5 Q. And what was her role with

6 respect to the substance of your damages

7 report?

8 A. Well, I mean, her role was what

9 I just described. If I needed something or

10 had a question, I would first go to her and

11 she would try to help me.

12 Q. Did she interview people at

13 Summit County?

14 A. She may have. I'm not

15 100 percent sure.

16 Q. Did she interview people at

17 Cuyahoga County?

18 A. I'm not sure about that either.

19 Q. How did you remember that

20 Heather Spang had a role in the damages

21 report when it didn't occur to you last

22 Tuesday?

23 A. That's -- I don't know. I

24 just -- I had the feeling when we talked last

25 Tuesday that I was forgetting somebody, and I

1 felt bad about it. And then I went back and

2 checked and I said, "Oh, gosh, I forgot

3 Heather." So I just forgot.

4 Q. What did you go back and check?

5 A. E-mails.

6 Q. E-mails with Compass Lexecon?

7 A. Yeah. Yes.

8 Q. Okay. Did anyone else help you

9 on your damages report besides the people

10 you've now mentioned: Mr. Cider,

11 Ms. Kaminski, Mr. McKay, Ms. Spang?

12 A. Erica Benton.

13 Q. And Ms. Benton.

14 Anyone else?

15 A. Not that I know of. There may

16 have been other staff that they used, but I

17 don't know.

18 Q. Okay. And you mentioned a

19 second firm.

20 Can you spell that for the

21 court reporter?

22 A. Yeah, it's -- the first name is

23 Greylock, G-r-e-y-l-o-c-k, and it's one word,

24 and then McKinnon, M-a-c-K i-n-n-o-n {sic},

25 Associates.

1 Q. And what was Greylock McKinnon

2 Associates' role on the damages report?

3 A. Also to help support my report

4 writing.

5 Q. What did Greylock McKinnon

6 Associates do to help support your report

7 writing?

8 A. I would identify literature

9 that I needed to understand or information I

10 needed, and they would help me with that.

11 Q. How many people were on the

12 Greylock McKinnon Associates team helping you

13 on the damages report?

14 MR. SOBOL: You mean public

15 nuisance?

16 MR. KEYES: No, damages report.

17 MR. SOBOL: Okay.

18 THE WITNESS: On the damages

19 report?

20 QUESTIONS BY MR. KEYES:

21 Q. Yeah.

22 I asked you before, what did

23 Greylock McKinnon Associates do to help

24 support your report writing with respect to

25 the damages report.

1 A. Oh, okay.

2 MR. SOBOL: We both flipped out

3 on that.

4 THE WITNESS: Yeah, sorry.

5 QUESTIONS BY MR. KEYES:

6 Q. Did Greylock McKinnon

7 Associates help you on the damages report?

8 A. Much less. There may have been

9 some --

10 Q. Much less than Compass Lexecon

11 did --

12 A. Yes.

13 Q. -- on the --

14 A. The damages report was

15 primarily Compass Lexecon.

16 Q. So I'm asking: What did

17 Greylock McKinnon Associates do to help you

18 on the damages report?

19 A. Okay. You know, part of what I

20 needed to do in the damages report is

21 understand the reports coming before me,

22 which -- by which I mean the Rosenthal report

23 and the Cutler report.

24 The empirical work in the

25 Rosenthal report was primarily supported by

1 staff at Greylock McKinnon, and I had

2 occasion to speak with that staff who, you

3 know, helped me understand these.

4 Q. Who were the members of the

5 Greylock McKinnon Associates team that helped

6 you on the damages report?

7 A. The fellow's name is Forrest,

8 and then McCluer, M-c-C-l-e-u-r {sic}.

9 Q. Did anyone besides Mr. McCluer

10 from Greylock McKinnon Associates help you on

11 the damages report?

12 A. I don't think so.

13 Q. What was Greylock McKinnon

14 Associates' role on the nuisance report?

15 A. There was more individuals

16 involved in supporting, but the role was, as

17 I described earlier, they would help me with

18 information and literature.

19 Q. And who are the -- who are the

20 specific people at Greylock McKinnon

21 Associates who helped you on the nuisance

22 report?

23 A. Okay. There are three: Renee

24 Rushnawitz, and she's one of the owners of

25 the firm; and Adrian Gonzalez, who's -- I

1 think his title is analyst, probably; and

2 then Amanda Kreider, who also is an analyst

3 there.

4 Q. And how did these three people

5 help you specifically on your public nuisance

6 report?

7 A. They helped me track down

8 papers and studies.

9 Q. Just get copies of them or read

10 them?

11 A. Sometimes they read them.

12 Q. And did they prepare summaries

13 of them for you?

14 A. In some cases there were kind

15 of an indication of what the papers were

16 about, so then it would help me figure out

17 where I needed to read more in more detail.

18 Q. And are these written

19 indications of what certain papers were

20 about?

21 MR. SOBOL: Just yes or no.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. KEYES:

24 Q. Did you read these written

25 indications you got from the Greylock

1 McKinnon Associates team?

2 A. Mostly, yes.

3 Q. Did you rely on them to decide

4 what to read yourself?

5 A. They helped guide me into what

6 I should be looking at in more detail.

7 Q. So did you rely on them in

8 order to do your work on this engagement?

9 MR. SOBOL: Objection.

10 THE WITNESS: Well, I used them

11 in the specific way I just answered.

12 They helped guide what I should pay

13 more attention to.

14 QUESTIONS BY MR. KEYES:

15 Q. Now, were there times when you

16 read their -- what you describe as a written

17 indication and just use that and not go to

18 the original source?

19 A. Not that I can think of.

20 Q. Were there times when you got

21 the written indication of what the paper said

22 and then you actually went to the original

23 source and read it?

24 A. Many times.

25 Q. Every time?

1 MR. SOBOL: Objection.

2 THE WITNESS: I don't know if I

3 would have sometimes decided something

4 was in one of their outlines that I --

5 for whatever reason I decided, no, I'm

6 not going to look at that. I don't

7 know. That probably happened.

8 QUESTIONS BY MR. KEYES:

9 Q. Prior to this engagement, have

10 you ever offered an opinion that a public

11 nuisance existed?

12 A. Not in any legal sense.

13 Q. In any case?

14 A. In any legal -- in some

15 litigation context?

16 Q. Yeah.

17 A. No, this is my first public

18 nuisance report.

19 Q. And prior to this engagement,

20 have you ever offered opinions about the

21 magnitude of harms or costs associated with

22 the public nuisance?

23 A. This is -- you're also asking

24 in a litigation context?

25 Q. Yes.

1 A. No, this is my first public

2 nuisance venture.

3 Q. Prior to this engagement, have

4 you ever served as a testifying expert

5 offering opinions regarding a public

6 nuisance?

7 MR. SOBOL: Objection. Asked

8 and answered.

9 THE WITNESS: No, this is my

10 first public nuisance venture.

11 QUESTIONS BY MR. KEYES:

12 Q. Prior to this engagement, has

13 Compass Lexecon ever worked on a case

14 involving whether a public nuisance existed?

15 A. I don't know.

16 Q. Prior to this engagement, has

17 Compass Lexecon ever worked on a case

18 attempting to determine the magnitude of

19 harms or costs associated with the public

20 nuisance?

21 A. I don't know.

22 Q. Prior to this engagement, has

23 Greylock McKinnon Associates ever worked on a

24 case involving whether a public nuisance

25 existed?

1 A. I don't know.

2 Q. Prior to this engagement, has

3 Greylock McKinnon Associates ever worked on a

4 case attempting to determine the magnitude of

5 harms or costs associated with the public

6 nuisance?

7 A. I don't know.

8 Q. In paragraph 21 of your report

9 on public nuisance --

10 Are you there?

11 A. Yes, I'm here.

12 Q. -- you discuss physicians being

13 influenced by, quote, "Detailing visits by

14 representatives of brand drug companies and

15 other promotional activities by drug

16 companies."

17 A. Excuse me, I think I must be on

18 the wrong page.

19 Can you give me another --

20 Q. Paragraph 21.

21 A. Paragraph 21. Okay.

22 Okay.

23 Q. Are you there?

24 A. Yes.

25 Q. Okay. In paragraph 21 you

1 discuss physicians being influenced by,

2 quote, "Detailing visits by representatives

3 of brand drug companies and other promotional

4 activities by drug companies."

5 Do you see that?

6 A. I see it.

7 Q. Have you studied detailing

8 visits by manufacturing defendants to

9 physicians?

10 A. Well, I've studied in a sense

11 of reading about it as part of my

12 professional --

13 Q. Reading about them?

14 A. Yes, that's what I said.

15 Q. Okay. Have you done any

16 independent study yourself?

17 MR. SOBOL: Objection.

18 QUESTIONS BY MR. KEYES:

19 Q. Of detailing visits?

20 MR. SOBOL: Objection.

21 THE WITNESS: Okay. Well, I --

22 in sort of a general term, that's an

23 independent study. It's me. It's

24 reading. That's a kind of study.

25 What I haven't done is

1 independently assessed the empirical
 2 connection between detailing visits
 3 and sales or shipments.
 4 QUESTIONS BY MR. KEYES:
 5 Q. You say in paragraph 21, quote,
 6 "In the context of prescription opioids,
 7 manufacturers were purveying biased
 8 information."
 9 A. I'm sorry, you've lost me
 10 again.
 11 Q. You say in paragraph 21, "In
 12 the context of prescription opioids" --
 13 MR. SOBOL: It's third line
 14 down.
 15 THE WITNESS: Okay. Okay.
 16 QUESTIONS BY MR. KEYES:
 17 Q. Okay. Have you studied what
 18 false information was disseminated by
 19 manufacturers to physicians?
 20 A. Well, I'm relying on other
 21 experts for making that determination.
 22 Q. Who?
 23 A. Well, as it says in the very
 24 next sentence there, "As explained in the
 25 expert report of Matthew Perri."

1 Q. Anyone else?
 2 A. It's also covered in some
 3 Kessler stuff and Dr. Parran stuff.
 4 Q. Have you studied what false
 5 information was disseminated by manufacturers
 6 to patients?
 7 MR. SOBOL: Objection. Form.
 8 You may answer.
 9 THE WITNESS: Well, again, I
 10 rely on the reports of these other
 11 experts for that.
 12 QUESTIONS BY MR. KEYES:
 13 Q. You're relying on the same
 14 experts you just mentioned?
 15 A. Yes.
 16 Q. Have you studied what false
 17 information was disseminated by manufacturers
 18 to consumers?
 19 A. I'd be relying on the same
 20 experts for that.
 21 Q. Have you studied what, quote,
 22 "systematically and intentionally
 23 misleading," quote, information was
 24 disseminated by manufacturers to physicians?
 25 A. Is that a quote from me?

1 Q. Yes. You used the phrase
 2 "systematically and intentionally
 3 misleading."
 4 A. And where might I find that
 5 phrase?
 6 Q. Do you recall using that phrase
 7 in your own report?
 8 A. It rings a bell, but I want
 9 to -- I'd like to see where you're talking
 10 about.
 11 Q. Do you see the sentence that I
 12 read you a moment ago about purveying biased
 13 information?
 14 A. Yes.
 15 Q. The very next sentence refers
 16 to "The information doctors were being given
 17 about the dangers of prescription opioids was
 18 in most cases false and systematically and
 19 intentionally misleading."
 20 Do you see that?
 21 A. I do, yes.
 22 Q. Okay. So have you studied
 23 what, quote, "systematically and
 24 intentionally misleading," quote, information
 25 was disseminated by manufacturers to

1 physicians?
 2 A. Well, on -- in this -- on
 3 this -- for this statement I also rely on
 4 Dr. Perri, as the footnote indicates.
 5 Q. Have you studied what, quote,
 6 "systematically and intentionally
 7 misleading," end quote, information was
 8 disseminated by manufacturers to patients?
 9 A. The same. I have -- I rely on
 10 these three other experts for this material.
 11 Q. Have you studied what, quote,
 12 "systematically and intentionally
 13 misleading," end quote, information was
 14 disseminated by manufacturers to consumers?
 15 A. In the same way, this is
 16 something I rely on the three experts in my
 17 report.
 18 Q. Will you turn to page 6 of your
 19 report?
 20 Are you there?
 21 A. I'm there, yeah.
 22 Q. In paragraph 10 you say, "I
 23 will use the term 'defendants' shipments of
 24 prescription opioids,' or sometimes just
 25 'shipments,' as a shorthand for the activity

1 the bellwether plaintiffs claim constitutes a
 2 public nuisance regarding both the marketing
 3 and distribution of prescription opioids by
 4 defendants."
 5 Do you see that?
 6 A. I do see that, yes.
 7 Q. And when you refer to "the
 8 bellwether plaintiffs" here, you're referring
 9 to Summit County and Cuyahoga County,
 10 correct?
 11 A. That's correct.
 12 Q. And only those two counties,
 13 correct?
 14 A. That's correct.
 15 Q. And when you refer to the
 16 bellwether plaintiffs elsewhere in this
 17 report, again, you're referring to Summit
 18 County and Cuyahoga County, correct?
 19 A. That's correct.
 20 Q. And only those two counties?
 21 A. That's correct.
 22 Q. And so is it accurate based on
 23 this statement to say that every time you
 24 refer to, quote, "shipments," you are
 25 referring to all of the marketing of

1 prescription opioids by all of the defendants
 2 and all of the distribution of prescription
 3 opioids by all the defendants?
 4 A. Can you ask me again? I'm
 5 sorry.
 6 Q. Yeah.
 7 A. I have --
 8 Q. I just showed you the language
 9 in paragraph 10.
 10 A. Yeah.
 11 Q. I want to confirm: Is it
 12 accurate based on paragraph 10 to say that
 13 every time you refer to, quote, "shipments,"
 14 end quote, you're referring to all of the
 15 marketing of prescription opioids by all of
 16 the defendants and all of the distribution of
 17 prescription opioids by all of the
 18 defendants?
 19 A. Well, if by "marketing" you
 20 mean "sales," then I think that's correct.
 21 Q. Would you turn to page 9 of
 22 your report?
 23 A. Okay.
 24 Q. Are you there?
 25 A. I'm there.

1 Q. Okay. In paragraph 16 you say,
 2 "A public nuisance in economic terms is
 3 generally observed when an action or set of
 4 actions undertaken by a party or group of
 5 parties gives rise to overwhelming negative
 6 externalities."
 7 Do you see that?
 8 A. I do, yes.
 9 Q. And you use this definition
 10 when you opine that a, quote, "public
 11 nuisance has resulted from the shipment of
 12 prescription opioids into the bellwether
 13 communities."
 14 A. And where am I reading when I
 15 see that?
 16 Q. Well, that's on page 7,
 17 paragraph 14.
 18 A. Okay. So far so good.
 19 Q. Okay. So do you see that your
 20 reference to "I am of the opinion, to a
 21 reasonable degree of certainty in the area of
 22 applied microeconomics, that a public
 23 nuisance has resulted from the shipment of
 24 prescription opioid products into the
 25 bellwether communities"?

1 Do you see that language?
 2 A. I see that, yes.
 3 Q. And when you offer that
 4 opinion, referring to a public nuisance, you
 5 are using the definition that you provided in
 6 paragraph 16 on page 9, correct?
 7 MR. SOBOL: Objection.
 8 THE WITNESS: Well, I wouldn't
 9 call this a definition.
 10 QUESTIONS BY MR. KEYES:
 11 Q. What would you call it?
 12 A. It's a statement.
 13 Q. Okay.
 14 A. I'm not sure -- it doesn't say
 15 definition. It doesn't mean to be an
 16 if-and-only-if statement.
 17 Q. Well, when you are talking in
 18 this report about a public nuisance in
 19 economic terms, are you using some different
 20 standard for public nuisance than what you
 21 describe here?
 22 A. Well, this --
 23 Q. Paragraph 16?
 24 A. The definition of public
 25 nuisance that I'm using is set out here.

1 It's probably -- a little bit earlier. It
 2 was given to me by counsel. That's contained
 3 in paragraph 7, which I then interpreted for
 4 my purposes as containing three components.
 5 And if you ask me for a definition, that's
 6 what I would give you.

7 Q. Okay. So you're using the
 8 legal definition that you say was provided to
 9 you by plaintiffs' counsel as set forth in
 10 paragraph 7?

11 MR. SOBOL: Objection.

12 Mischaracterizes his testimony.

13 THE WITNESS: Well, this is --
 14 I was instructed to be guided by this
 15 definition, which I was. And then in
 16 order to evaluate whether a public
 17 nuisance existed, I used that
 18 definition to identify three things
 19 that I should study, and the three
 20 things are on page 21.

21 QUESTIONS BY MR. KEYES:

22 Q. Right.

23 So, Professor McGuire, when you
 24 are offering the opinion that there is a
 25 public nuisance, are you using the definition

1 provided by counsel in paragraph 7, or are
 2 you using what you say is a public nuisance
 3 in economic terms as described in
 4 paragraph 16?

5 MR. SOBOL: Objection. Form.

6 THE WITNESS: See, I wouldn't
 7 put it that way. I was guided by the
 8 legal instruction. Paragraph 38 uses
 9 the word "definition." So this is
 10 what I would point you to in terms of
 11 where it's defined. I consider the
 12 elements of a definition, so this is
 13 where the definition takes place.

14 QUESTIONS BY MR. KEYES:

15 Q. So when you offer the opinion
 16 that there was a public nuisance, are you
 17 using the definition in paragraph 38, or are
 18 you using what you describe as a public
 19 nuisance in economic terms as set forth in
 20 paragraph 16?

21 MR. SOBOL: Objection.

22 Mischaracterizes.

23 THE WITNESS: This is the --
 24 paragraph 38 uses the word
 25 "definition." So this is where I

1 define what I'm -- definition --
 2 definition of a public nuisance.
 3 There it is. And this is what I do in
 4 my report.

5 QUESTIONS BY MR. KEYES:

6 Q. Okay. And going back to
 7 paragraph 16 of your report --

8 A. Okay.

9 Q. -- where you describe what a
 10 public nuisance is in economic terms, do you
 11 see that language?

12 A. I do.

13 Q. Okay. And you describe it as
 14 something that gives rise to overwhelming
 15 negative externalities?

16 MR. SOBOL: Objection. That's
 17 not the whole sentence.

18 THE WITNESS: Well, the
 19 sentence is what I say, but I'm sure
 20 you have a question in mind.

21 QUESTIONS BY MR. KEYES:

22 Q. You say, "A public nuisance
 23 gives rise to overwhelming negative
 24 externalities."

25 MR. SOBOL: Objection. That's

1 not what the sentence says.

2 MR. KEYES: I already read what
 3 the sentence says.

4 QUESTIONS BY MR. KEYES:

5 Q. Do you disagree with the
 6 concept that a public nuisance gives rise to
 7 overwhelming negative externalities?

8 A. The entire sentence says, "A
 9 public nuisance in economic terms is
 10 generally observed when an action undertaken
 11 by a party or a group of parties gives rise
 12 to an overwhelming negative externality."

13 Q. So in economic terms, does a
 14 public nuisance gives rise to overwhelming
 15 negative externalities?

16 MR. SOBOL: Objection.

17 Mischaracterizes his testimony.

18 MR. KEYES: I'm not
 19 characterizing anything. I'm asking
 20 him a question.

21 MR. SOBOL: Well, leave your
 22 words out of it.

23 MR. KEYES: You're the
 24 economist.

25 MR. SOBOL: Leave your words

1 out of it.

2 MR. KEYES: You're the

3 economist.

4 QUESTIONS BY MR. KEYES:

5 Q. So in economic terms, does a

6 public nuisance give rise to overwhelming

7 negative externalities?

8 MR. SOBOL: Objection.

9 Mischaracterizes his testimony.

10 THE WITNESS: Generally

11 observed, when an action -- well, I

12 don't know if there's any point in

13 reading the sentence, which we've done

14 already, but you're changing the

15 meaning.

16 QUESTIONS BY MR. KEYES:

17 Q. Does an action -- in economic

18 terms, does an action have an externality

19 even if it harms or imposes costs on just one

20 other person?

21 MR. SOBOL: Objection.

22 THE WITNESS: Let me see if I

23 follow.

24 Now we're -- you're not using

25 the word "public nuisance" in that

1 question. You're asking a question

2 about whether an externality in

3 economic terms can fall on just one

4 other person?

5 QUESTIONS BY MR. KEYES:

6 Q. Yes.

7 A. The answer to that is yes.

8 Q. Okay. In economic terms, does

9 an action have an externality even if it does

10 not interfere with individuals in their

11 exercise of public rights?

12 MR. SOBOL: Objection. Form.

13 THE WITNESS: Trying to make

14 sure I...

15 Does an action have an

16 externality even if it does not

17 interfere with exercise of public

18 rights?

19 So the answer to that question

20 is that, yes, an externality can

21 involve some other form of negative

22 effect on a second party that could

23 take different forms.

24 So I'm not sure whether it's

25 yes or no, but that's the way I would

1 put it.

2 QUESTIONS BY MR. KEYES:

3 Q. Well, when you describe a

4 public nuisance in paragraph 16, in economic

5 terms, you say, "When an action or set of

6 actions undertaken by a party or group of

7 parties gives rise to overwhelming negative

8 externalities," correct?

9 MR. SOBOL: Objection. That

10 mischaracterizes the testimony, and

11 it's been asked and answered about

12 four times.

13 I don't know what you don't

14 like about the word "generally."

15 THE WITNESS: Well, that's the

16 sentence I say, but -- so I'm not sure

17 what the question is then.

18 QUESTIONS BY MR. KEYES:

19 Q. And when you give that sentence

20 where you're describing a public nuisance in

21 economic terms, it says nothing about

22 interfering with a public right, correct?

23 A. Well, I don't know. It says

24 what it says here.

25 Q. What do you mean you don't

1 know?

2 Look at the -- look at

3 paragraph 16 and tell me whether it says

4 anything about interfering with public

5 rights.

6 MR. SOBOL: Objection.

7 THE WITNESS: Well, you

8 wouldn't need to ask that question if

9 you looked at paragraph 16.

10 No, it doesn't.

11 QUESTIONS BY MR. KEYES:

12 Q. Okay. It refers to giving rise

13 to overwhelming negative externalities.

14 What are the criteria in the

15 field of economics for determining whether

16 negative externalities are, quote,

17 "overwhelming," end quote?

18 A. Well, there's no, I would say,

19 hard-and-fast definition of what overwhelming

20 means. I guess, you know, it means very

21 large.

22 And where I do get around to

23 defining what a public nuisance is, in

24 paragraph 38 I use words that are, you know,

25 similar: "continuing, long-lasting effects"

1 and "significantly interfere."
 2 That's what I was asked to
 3 assess, and when the numbers run into the
 4 billions for two counties, it satisfies my
 5 definition of what overwhelming is.
 6 Q. I didn't ask about
 7 paragraph 38. I asked about the language you
 8 used in paragraph 16.
 9 In paragraph 16 in your report
 10 that you say you wrote, you say, "A public
 11 nuisance gives rise to overwhelming negative
 12 externalities."
 13 My question is: What are the
 14 criteria in the field of economics for
 15 determining whether negative externalities
 16 are, quote, "overwhelming"?
 17 MR. SOBOL: Okay. First, I
 18 object --
 19 QUESTIONS BY MR. KEYES:
 20 Q. And you said, "very large."
 21 Can you be more specific about
 22 the criteria in the field of economics for
 23 determining what, quote, "overwhelming"
 24 means?
 25 MR. SOBOL: Well, first, I

1 object to the speech beforehand. I
 2 don't know whether or not you're
 3 asking the witness to adopt the speech
 4 or not.
 5 But I take it that what you are
 6 asking is the end question alone,
 7 which is, can you be more specific
 8 about the criteria in the field of
 9 economics for determining what
 10 overwhelming means.
 11 THE WITNESS: Well, I think I
 12 interpret this question as another
 13 version of the question I had earlier,
 14 and as I said there, the term
 15 "overwhelming" is one that doesn't
 16 have a bright-line criteria of what is
 17 overwhelming and not overwhelming. It
 18 depends on the context.
 19 What is significant, that's
 20 where large is.
 21 Continuing, that has to deal
 22 with time.
 23 Long-lasting, that has to deal
 24 with how long negative effects
 25 persist. And that was the charge I

1 had here in order to evaluate that.
 2 And when you say Table 1, I
 3 thought, okay, yes, \$20 billion in two
 4 counties due to shipments, that meets
 5 my criteria.
 6 QUESTIONS BY MR. KEYES:
 7 Q. Can you point me to any sources
 8 that you would rely on for identifying the
 9 criteria for determining whether a negative
 10 externality is overwhelming?
 11 A. I don't have anything more than
 12 I told you in answer to the last question.
 13 Q. Okay. Would you turn to
 14 page 37?
 15 A. Okay.
 16 Q. You have a section titled "The
 17 Interference from Shipments was
 18 Unreasonable."
 19 Do you see that?
 20 A. I do, yeah.
 21 Q. Now, in offering your opinion
 22 that the interference with shipments was
 23 unreasonable, you offer the opinion that the
 24 number of shipments was unreasonable,
 25 correct?

1 A. Yeah, or -- well, I have a
 2 criteria for what unreasonable means, which
 3 is that -- what do I say here?
 4 Q. Well, are you able to tell me
 5 without looking at your report?
 6 A. It helps me to be more specific
 7 to look at the report, and it's right here,
 8 so it won't take much time.
 9 So it's not, I wouldn't say,
 10 number. It's the shipments were unreasonable
 11 if they're not justified by clinical need.
 12 And it wasn't really a count that I looked
 13 at. I looked at more of a share.
 14 Q. Okay. I want to be clear that
 15 I understand the logic.
 16 You say the interference from
 17 shipments was unreasonable, right?
 18 A. Yes.
 19 Q. And you're talking about the
 20 interference with a public right, correct?
 21 A. Well, I'm talking about exactly
 22 what I said earlier, with interference with
 23 applicable health and safety.
 24 Q. And you're saying that that
 25 interference with those things was

1 unreasonable because the volume of shipments
 2 was unreasonable --
 3 MR. SOBOL: Objection.
 4 QUESTIONS BY MR. KEYES:
 5 Q. -- right?
 6 MR. SOBOL: Objection.
 7 THE WITNESS: That's close.
 8 It's not exactly what I was doing.
 9 But I have a definition of
 10 unreasonable laid out in paragraph 62
 11 on instruction from counsel --
 12 QUESTIONS BY MR. KEYES:
 13 Q. Right, but that --
 14 A. -- and -- excuse me one sec.
 15 I attempted to evaluate whether
 16 that was satisfied by the large majority of
 17 shipments.
 18 Q. To determine whether the
 19 shipments were reasonable or not, using the
 20 definition that you just described, which is
 21 not justified by a clinical need?
 22 A. I think that's correct.
 23 Q. Okay. And you were instructed
 24 by counsel to assume that unreasonable is, in
 25 substance, not justified by clinical need,

1 correct?
 2 MR. SOBOL: Objection.
 3 THE WITNESS: Basically
 4 correct, yes.
 5 QUESTIONS BY MR. KEYES:
 6 Q. Okay. And then you opine that
 7 shipments were unreasonable in this case
 8 because most shipments were not used for
 9 clinically justified treatment, correct?
 10 A. The large majority of shipments
 11 were not used for scientifically, yes,
 12 acceptable, yes, treatment.
 13 Q. Did you do any independent
 14 examination of which shipments were used for
 15 clinically justified treatment and which were
 16 not?
 17 A. By which you mean in a
 18 particular year in a particular county of all
 19 the shipments, to sort them into two buckets?
 20 Q. Yes.
 21 A. No, I didn't do that.
 22 Q. Who did that?
 23 A. You mean classify or do you
 24 mean -- I'm lost about -- excuse me. Go
 25 ahead. Ask a question.

1 Q. Who studied which shipments
 2 were used for clinically justified treatment?
 3 A. What I rely on and what I
 4 understand about this, in the sense in
 5 which -- there's a which here -- is there's a
 6 count of opioid shipments that -- this comes
 7 from the Rosenthal report -- in kind of
 8 theoretical maximum could have been used for
 9 appropriate medical treatment. That's -- the
 10 result of that is a kind of share. It's
 11 not as I -- I think I misunderstood the
 12 first -- when -- the time you asked the
 13 question.
 14 It's not saying this shipment
 15 yes; this shipment no. It was looking at of
 16 all the shipments, how many of them could
 17 have been justified by clinical criteria.
 18 Q. Well, did Professor Rosenthal
 19 look at particular shipments to determine
 20 whether they were justified -- clinically
 21 justified treatment?
 22 A. This is where I make sure I'm
 23 not confused again here.
 24 By particular shipments,
 25 what -- my understanding is that what she did

1 not do was examine, you know, particular --
 2 MR. SOBOL: John Doe.
 3 THE WITNESS: -- shipments to a
 4 particular patient or through a
 5 particular distributor or through a
 6 particular drugstore, but it was to
 7 identify in a time period and a
 8 location what share of the total
 9 shipments could have been attributed
 10 to appropriate clinical treatment.
 11 QUESTIONS BY MR. KEYES:
 12 Q. What test did she use for that?
 13 A. She relied on -- primarily on
 14 expertise of some of the medical experts.
 15 Q. Who?
 16 A. Primarily on Schumacher and
 17 Dr. Parran.
 18 Q. Did you examine which shipments
 19 for a particular time period in a particular
 20 location could be attributed to appropriate
 21 clinical treatment?
 22 A. Well, again, the which in the
 23 sense of which patient, which outlet, I
 24 didn't examine that, but I, you know, applied
 25 the estimates from Rosenthal's report about

1 the share of the total that could be put in
 2 the clinically acceptable/not clinically
 3 acceptable categories.
 4 Q. Okay. So are you relying on
 5 Professor Rosenthal then to determine which
 6 shipments are for clinically acceptable
 7 treatment and which ones are not?
 8 A. Well, two nos there. Two nos
 9 to this question.
 10 It's which share, if you
 11 would -- if you were to substitute which
 12 share of shipments, then I would -- that
 13 would be the kind of thing I investigated.
 14 And it's not only on Professor Rosenthal.
 15 There's other material that supports that.
 16 Q. Okay. Well, I just want to
 17 make sure I understand.
 18 You say that counsel instructed
 19 you to use not justified by clinical need as
 20 the standard for unreasonable, correct?
 21 A. Correct.
 22 Q. And you did not independently
 23 examine the extent to which shipments were or
 24 were not justified by clinical need, correct?
 25 A. Well, I took the same

1 percentages and the same other inputs that go
 2 into that calculation. I used Professor
 3 Rosenthal's numbers for those.
 4 Q. Right.
 5 So you're relying on Professor
 6 Rosenthal's numbers --
 7 A. One sec, though.
 8 What I did, read the backup
 9 that she used, and I did, you know, study the
 10 other parts of the Cutler and Gruber report
 11 that also support that analysis.
 12 Q. Did you independently test
 13 Professor Rosenthal's work or conclusions
 14 about the share of shipments that were not
 15 justified by clinical need?
 16 A. Well, in the sense of checking
 17 it against the other evidence in the case,
 18 such as the clinical opinions and the work by
 19 Gruber and Cutler.
 20 Q. Have you done your own study of
 21 the share of prescriptions that are
 22 clinically appropriate?
 23 A. Well, what I did is in the
 24 report, and I used Professor Rosenthal's
 25 estimates in order to apply them to the

1 bellwether counties.
 2 Q. And what is -- what standard
 3 did Professor Rosenthal use to determine
 4 which shares of shipments were clinically
 5 justified treatment?
 6 A. She relied on medical experts
 7 for that.
 8 Q. Which experts?
 9 A. Schumacher and Parran, I
 10 believe.
 11 Q. Okay. And does Professor
 12 Rosenthal take a position in running those
 13 calculations on whether prescription opioids
 14 are a clinically appropriate use for chronic
 15 pain?
 16 A. I would have to go back and see
 17 exactly what she said about that. She has a
 18 qualifier in there, but she did not include
 19 any estimates of chronic pain in her
 20 clinically appropriate categories.
 21 Q. If people do obtain pain relief
 22 from chronic pain when they use prescription
 23 opioids, would that change your opinion --
 24 MR. SOBOL: Objection.
 25

1 QUESTIONS BY MR. KEYES:
 2 Q. -- as to which share of
 3 shipments were for clinically justified
 4 treatment?
 5 MR. SOBOL: Objection.
 6 You may answer.
 7 THE WITNESS: No.
 8 QUESTIONS BY MR. KEYES:
 9 Q. Why not?
 10 A. Well, my opinion about this
 11 has, I think, a pretty good basis, and it
 12 doesn't depend on a -- you know, a single
 13 aspect of the situation.
 14 I would say in summary that the
 15 weight of clinical evidence is that, in fact,
 16 there's no studies that I'm aware of that
 17 demonstrate that opioids are effective for
 18 long-term clinical pain.
 19 Q. What is the FDA --
 20 MR. SOBOL: He hasn't finished
 21 his answer.
 22 THE WITNESS: So that's -- so
 23 that's one.
 24 You see that in the CDC, and
 25 you see that in the medical experts as

1 well. That's number one.

2 Number two is the CDC and the

3 medical experts and other papers say

4 these are dangerous drugs. That's

5 number two.

6 And number three, in almost all

7 cases, opioids are a third-line

8 treatment for long-term chronic pain.

9 Just one -- I'm wrapping up

10 here.

11 So you put those statements

12 together, and they provide a strong

13 basis for saying that the share of

14 appropriate treatments in the chronic

15 pain category is going to be really

16 small.

17 QUESTIONS BY MR. KEYES:

18 Q. What does the FDA say about

19 whether prescription opioids can be used for

20 chronic pain?

21 MR. SOBOL: Objection.

22 THE WITNESS: I'm not sure.

23 QUESTIONS BY MR. KEYES:

24 Q. Did you look into that?

25 A. Well, for that sort of thing is

1 what I rely on medical experts for, to read

2 labels and tell me what is the appropriate

3 and not appropriate categories.

4 Q. Does Medicare cover

5 prescription opioids?

6 MR. SOBOL: Objection.

7 THE WITNESS: Yes, I think they

8 do.

9 QUESTIONS BY MR. KEYES:

10 Q. Does Medicare cover

11 prescription opioids for chronic pain?

12 MR. SOBOL: Objection.

13 THE WITNESS: Well, normally

14 when you write a prescription as a

15 doctor, you don't even put the

16 diagnosis down. So the prescription

17 would go through the system, as it

18 were, without a diagnosis.

19 QUESTIONS BY MR. KEYES:

20 Q. Does Medicare cover

21 prescription opioids that are specifically

22 prescribed for chronic pain?

23 MR. SOBOL: Objection.

24 THE WITNESS: Well, Medicare

25 wouldn't know. They don't get a

1 diagnosis on a claim form.

2 QUESTIONS BY MR. KEYES:

3 Q. Well, you can say that. That's

4 not my question.

5 My question was: Does Medicare

6 cover prescription opioids that are

7 specifically prescribed for chronic pain?

8 MR. SOBOL: Objection. Asked

9 and answered.

10 THE WITNESS: Let me try to

11 answer it another way.

12 If a physician were to

13 prescribe a prescription opioid for a

14 stomach upset or for a sore foot, that

15 physician could write that

16 prescription and it would be filled at

17 the pharmacy. Medicare does not know

18 what the particular indication is that

19 the doctor is prescribing that opioid

20 for.

21 QUESTIONS BY MR. KEYES:

22 Q. Has Medicare made a

23 determination as to whether it will cover

24 prescriptions for opioids that are expressly

25 for the purpose of treating chronic pain?

1 MR. SOBOL: Objection. Asked

2 and answered.

3 THE WITNESS: I'm not sure.

4 QUESTIONS BY MR. KEYES:

5 Q. Did you look into that?

6 A. That's also something that I --

7 that's obviously a clinical question of what

8 is the appropriate use of opioids, and that's

9 something that there are other experts who

10 will be in a good position to talk about.

11 Q. Has Medicaid made a

12 determination as to whether it will cover

13 prescriptions for opioids that are expressly

14 for the purpose of treating chronic pain?

15 MR. SOBOL: Objection.

16 THE WITNESS: Well, Medicaid is

17 in the same position as Medicare when

18 it comes to what information it knows

19 as a claim comes in for a

20 prescription.

21 So if a physician in Medicaid

22 were to prescribe opioids totally

23 inappropriately, Medicaid wouldn't

24 know that.

25 So they're not in a position to

1 make a determination claim by claim
 2 what is being -- the use of the opioid
 3 is for.
 4 QUESTIONS BY MR. KEYES:
 5 Q. My question was: Has Medicaid
 6 made a decision to cover opioids that are
 7 written expressly for the purpose of treating
 8 chronic pain?
 9 MR. SOBOL: Objection. Asked
 10 and answered.
 11 THE WITNESS: I was answering
 12 that question in the context of a
 13 particular prescription and pointing
 14 out that Medicaid, which -- are we
 15 talking about in the abstract, is not
 16 in a position to make that
 17 determination claim by claim.
 18 Medicaid is not just one thing
 19 in the United States. There are 50
 20 flavors, depending on the state, and
 21 even in the state there are different
 22 plans that participate in Medicaid,
 23 that have formularies that they
 24 determine on their own.
 25 So it's --

1 QUESTIONS BY MR. KEYES:
 2 Q. Have you looked at the
 3 formularies for any Medicaid or Medicare
 4 plan?
 5 A. As part of this, no. That's
 6 also the -- within the clinical realm of
 7 determining what is the appropriate use of
 8 opioids.
 9 Q. Have any private insurers made
 10 a decision to cover opioids that are written
 11 expressly for the purpose of treating chronic
 12 pain?
 13 MR. SOBOL: Objection.
 14 THE WITNESS: You know, it's
 15 not so different for the private
 16 insurers either. A claim comes in;
 17 they don't have a diagnosis on the
 18 claim. So it's -- they're not in a
 19 position on a claim-by-claim basis to
 20 make a determination of whether the
 21 use of the opioid is appropriate or
 22 inappropriate.
 23 QUESTIONS BY MR. KEYES:
 24 Q. My question was: Have any
 25 private insurers made a decision to cover

1 opioids that are written expressly for the
 2 purpose of treating chronic pain?
 3 MR. SOBOL: Objection. Asked
 4 and answered.
 5 THE WITNESS: Well, it's not
 6 possible on a claim-by-claim basis.
 7 And then, you know, we have many
 8 private insurers in the United States,
 9 so I'm really not in a position to
 10 answer.
 11 QUESTIONS BY MR. KEYES:
 12 Q. Have you looked at the
 13 formulary for any private insurer as to
 14 whether it covers prescription opioids for
 15 chronic pain?
 16 A. Now, this is the realm of the
 17 P & T committee at the health plan, which is
 18 a clinically driven decision. And for me as
 19 an economist, I'm very happy to rely on the
 20 expert, the medical experts, to tell me about
 21 this.
 22 Q. In your report regarding the
 23 public nuisance, you are attempting to
 24 quantify costs incurred by communities and
 25 individuals as a result of the opioid

1 problem, correct?
 2 A. That's generally correct, yes.
 3 Q. Okay. Do you understand that
 4 individuals in these communities are not
 5 parties to this lawsuit?
 6 A. Well, my understanding is the
 7 plaintiffs are the county governments.
 8 Q. Okay. So do you understand
 9 that individuals in Summit County and
 10 Cuyahoga County are not parties to this
 11 lawsuit?
 12 A. Well, I understand the
 13 plaintiffs to be the two county governments.
 14 Q. And not individuals?
 15 MR. SOBOL: Objection. Asked
 16 and answered.
 17 THE WITNESS: And, yes, in that
 18 those are the plaintiffs, period.
 19 QUESTIONS BY MR. KEYES:
 20 Q. Okay. And do you understand
 21 that the communities in the Summit County and
 22 Cuyahoga County are not parties to this
 23 lawsuit?
 24 MR. SOBOL: Objection. Form.
 25 THE WITNESS: In the same way,

1 the same answer. I understand the
2 plaintiffs to be the two county
3 governments, period.
4 QUESTIONS BY MR. KEYES:
5 Q. So when you attempted to
6 quantify the costs in the areas of mortality,
7 morbidity, NAS, crime and child maltreatment,
8 you are quantifying the costs borne by
9 individuals and communities in those areas,
10 correct?
11 A. They would be borne by a range
12 of actors. That would include the
13 governments, but also would include
14 individuals and other members of the
15 community.
16 Q. You've done specific
17 calculations of the costs borne by Summit
18 County and Cuyahoga County, correct?
19 A. I've done in my first report,
20 or my damages report, I did do specific
21 calculations of that, yes, that's correct.
22 Q. Right.
23 But I'm not asking about the
24 damages report now. I'm asking about the
25 work you did in the public nuisance report.

1 A. Okay. I understand.
2 Q. Okay. And there, where you are
3 quantifying costs in the five areas I listed,
4 you were quantifying the costs that are borne
5 by individuals or communities other than
6 Summit County and Cuyahoga County
7 governments?
8 A. Well, you know, I wouldn't
9 necessarily say that.
10 Q. Because?
11 MR. SOBOL: Objection.
12 THE WITNESS: Because I don't
13 think it's true.
14 QUESTIONS BY MR. KEYES:
15 Q. Where have you in your report,
16 your public nuisance report, have you
17 quantified the costs borne by the Summit
18 County or Cuyahoga County governments as a
19 result of the public nuisance that you say
20 exists?
21 A. Where in my report have I
22 quantified those things?
23 Q. Yes.
24 A. The most obvious component of
25 costs that I quantify that are borne by the

1 county governments are in the sixth category
2 that I apply, which is an importation from my
3 earlier report of the damages associated with
4 shipments as opposed to the shipments'
5 misconduct attribution.
6 That doesn't mean that some of
7 the costs in the other categories would not
8 have been borne by the county government.
9 Q. Professor McGuire, at this
10 point we may be seeking a third day from the
11 special master because you're not answering
12 the questions that are posed, and you keep
13 giving the same kinds of speeches.
14 So we've already covered what
15 you quantified as the costs borne by the
16 Cuyahoga County and Summit County
17 governments. That's in your damages report,
18 correct?
19 MR. SOBOL: Objection.
20 The speech should be completely
21 ignored, including the implicit
22 threat, if it's an effort to try and
23 manipulate the truthfulness of your
24 testimony and should be disregarded.
25 You can answer, however --

1 THE WITNESS: I'll focus on the
2 question.
3 MR. SOBOL: -- the question.
4 QUESTIONS BY MR. KEYES:
5 Q. You already quantified what you
6 said are the costs borne by Summit County and
7 Cuyahoga County, and you set forth those
8 calculations in your damages report, correct?
9 MR. SOBOL: Objection. Asked
10 and answered.
11 THE WITNESS: Well, the costs
12 here are ones due to shipments, not
13 due to misconduct.
14 So report 1, Exhibit 1,
15 damages, assessed costs due to
16 misconduct.
17 This is a different
18 calculation. And all I was answering
19 in response to your question was
20 clarifying that as a starting point
21 for how I -- for the -- you know,
22 where these costs would land.
23 And that was not a definitional
24 statement, it wasn't a repetition what
25 I did in the first report. It's an

1 explanation of the differences between
 2 what was done in the first report and
 3 this report.
 4 QUESTIONS BY MR. KEYES:
 5 Q. And those costs that you say
 6 were borne by the Summit County and Cuyahoga
 7 County governments you say were imported into
 8 your public nuisance report?
 9 MR. SOBOL: Objection. Asked
 10 and answered.
 11 QUESTIONS BY MR. KEYES:
 12 Q. Correct?
 13 A. Well, go on. I mean...
 14 Q. Well, go to page 80 of your
 15 report.
 16 Are you there?
 17 A. Yes.
 18 Q. You have a Table 13.
 19 Do you see that?
 20 A. Yes.
 21 Q. Okay. You have a summary of
 22 monetary value of harms due to prescription
 23 opioid shipments based on Dr. Cutler's
 24 Approach 2.
 25 A. Right.

1 Q. Okay?
 2 Now, go to the prior page.
 3 You have a Table 12, correct?
 4 A. Yes.
 5 Q. Summary of harms due to
 6 shipments from 2006 to 2016, correct?
 7 A. That's correct.
 8 Q. And in each of these two
 9 tables, Tables 12 and Table 13, you have six
 10 different forms of harm, correct?
 11 A. Correct.
 12 Q. The sixth form of harm in each
 13 table is titled "Bellwether Government
 14 Costs," correct?
 15 A. That's correct.
 16 Q. And you're referring to Summit
 17 County and Cuyahoga County, correct?
 18 A. That's correct.
 19 Q. And the numbers that you list
 20 here in each chart as being bellwether
 21 government costs are calculations that you
 22 imported from your damages report?
 23 MR. SOBOL: Objection.
 24 THE WITNESS: You will find --
 25

1 QUESTIONS BY MR. KEYES:
 2 Q. Correct?
 3 MR. SOBOL: Objection.
 4 THE WITNESS: You will find the
 5 basis for these numbers in my damages
 6 report.
 7 QUESTIONS BY MR. KEYES:
 8 Q. Okay. Turning to the fifth --
 9 the first form of harm, mortality deaths,
 10 correct?
 11 MR. SOBOL: Well, in these two
 12 tables?
 13 MR. KEYES: Yes.
 14 QUESTIONS BY MR. KEYES:
 15 Q. The costs that you are
 16 quantifying regarding mortality deaths are
 17 costs borne by individuals or communities,
 18 not costs borne by Summit County or Cuyahoga
 19 County, correct?
 20 A. See, that's not correct.
 21 Q. Where do you show the mortality
 22 deaths form of harm as causing specific costs
 23 borne by Summit County or Cuyahoga County?
 24 MR. SOBOL: Objection.
 25 THE WITNESS: I didn't do that.

1 I didn't -- in each of these other
 2 harm categories --
 3 MR. SOBOL: There's no
 4 question. You answered the question.
 5 MR. KEYES: Don't interrupt
 6 him. Let him finish his answer.
 7 Keep going.
 8 MR. SOBOL: Well, I think he
 9 did, and then he started volunteering
 10 stuff.
 11 MR. KEYES: No, sir. He's
 12 answering the question. Please stop
 13 interrupting him when he says
 14 something that perhaps you don't like.
 15 Continue, please.
 16 MR. SOBOL: I love it. I love
 17 everything he has to say. I just
 18 don't want him volunteering things
 19 when I'm hungry and want to go to
 20 lunch.
 21 But go ahead --
 22 QUESTIONS BY MR. KEYES:
 23 Q. You were saying?
 24 MR. SOBOL: -- Professor
 25 McGuire.

1 THE WITNESS: I was saying, in
 2 these categories I estimated the total
 3 costs without necessarily attributing
 4 them to who bore those costs.
 5 QUESTIONS BY MR. KEYES:
 6 Q. Okay. So in your Tables 12 and
 7 13, when you are talking about the form of
 8 harm being mortality and deaths, have you
 9 quantified the portion of the costs you've
 10 calculated as being attributable or borne by
 11 Summit County or Cuyahoga County government?
 12 A. That was not my assignment
 13 here. And if I can volunteer an example, at
 14 the risk of irritating my counsel, with
 15 respect to something like NAS costs --
 16 Q. My question has nothing to do
 17 with NAS. I'm asking about mortalities and
 18 deaths. Answer the question posed.
 19 MR. SOBOL: Now you're
 20 interrupting him.
 21 MR. KEYES: I am, because he's
 22 talking about something that the
 23 question didn't address at all.
 24 MR. SOBOL: All right. We're
 25 going to take a lunch. We're going to

1 take lunch.
 2 QUESTIONS BY MR. KEYES:
 3 Q. In Tables 12 and 13 --
 4 A. I don't mind. I don't mind.
 5 Let's finish this.
 6 Q. In Tables 12 and 13, when
 7 you're talking about --
 8 A. Let's talk about morbidity.
 9 Q. -- the form of harm being
 10 mortality and death, have you quantified
 11 anywhere in your report --
 12 MR. SOBOL: You got overridden
 13 on it. Start the question again. You
 14 got overridden. Just start the
 15 question again.
 16 He wants a clean question. He
 17 wants to continue. Start with a clean
 18 question.
 19 QUESTIONS BY MR. KEYES:
 20 Q. In Tables 12 and 13, when you
 21 were talking about the form of harm being
 22 mortality and deaths, have you quantified
 23 anywhere in your report the portion of those
 24 costs that you say were borne by Summit
 25 County or Cuyahoga County governments?

1 MR. SOBOL: Objection. Asked
 2 and answered.
 3 THE WITNESS: I thought in
 4 previous you had also asked about
 5 morbidity. Well, I was going to give
 6 you an example of morbidity. This
 7 will clear it up in one minute.
 8 With respect to morbidity
 9 costs, what I estimate are --
 10 QUESTIONS BY MR. KEYES:
 11 Q. I didn't ask about morbidity,
 12 sir. I've asked you about mortality and
 13 deaths.
 14 MR. SOBOL: I told you --
 15 QUESTIONS BY MR. KEYES:
 16 Q. Okay. Please answer the
 17 question.
 18 A. Okay.
 19 MR. SOBOL: So which question?
 20 QUESTIONS BY MR. KEYES:
 21 Q. In Tables 12 and 13, when you
 22 were talking about the form of harm being
 23 mortality and deaths, have you quantified
 24 anywhere in your report the portion of those
 25 costs that you say were borne by the Summit

1 County or Cuyahoga County governments?
 2 MR. SOBOL: Objection. Asked
 3 and answered.
 4 THE WITNESS: Okay. This
 5 question is part of a discussion we've
 6 had about whether or not the, as I
 7 understand it, the bellwether
 8 government costs line is a complete
 9 identification of the cost borne by
 10 the plaintiffs in the categories that
 11 I've put forth in these tables.
 12 The answer to that is, no, it's
 13 not the case.
 14 And you then asked me, have I
 15 done a specific allocation of some of
 16 these costs to the plaintiffs.
 17 And what I did was to look at
 18 the total. But if you are familiar
 19 with what the components of that total
 20 are, you would see some of those would
 21 be borne by the governments. You
 22 know, for example, some of the people
 23 who die would have been government
 24 employees. Some of the other people
 25 who die would have paid taxes to the

1 governments.

2 So the total lost productivity,

3 which is a component of the value of

4 statistical life, is a very good

5 example of a cost that is borne by

6 different agents.

7 Now, my assignment, as I

8 understood it, was to give the total.

9 You're asking if that total contains

10 things by the governments. The answer

11 is yes.

12 QUESTIONS BY MR. KEYES:

13 Q. No, I didn't ask that. I

14 didn't ask whether the total contains that.

15 I asked you specifically: Have

16 you quantified anywhere in your report the

17 portion of those costs that you say were

18 borne by the Summit County or Cuyahoga County

19 governments specific to mortality and deaths

20 anywhere in your report?

21 MR. SOBOL: Objection. Asked

22 and answered.

23 THE WITNESS: Okay. I just

24 gave what I thought is an important

25 and thorough answer to that question,

1 which is that these cost categories

2 contain many components. And what I

3 did is estimate the total. And those

4 components would be borne by -- some

5 for the individual, some for other

6 members of the community, some by the

7 county governments.

8 What I did not do, which is a

9 more direct answer to your question,

10 is I didn't allocate those costs in

11 each of these categories to any of

12 those agents.

13 QUESTIONS BY MR. KEYES:

14 Q. And the same is true for

15 mortality deaths, morbidity, babies with NAS,

16 crimes and child maltreatment, correct?

17 MR. SOBOL: Objection. Form.

18 Compound.

19 THE WITNESS: The same is true

20 with respect to my work in this

21 report, which was to identify the

22 total of those costs and then -- I

23 mean, in answer to your question, some

24 of those costs do fall on different

25 agents, including the governments, but

1 I didn't attempt to break out the --

2 what you would call in economic terms

3 the incidence of those costs according

4 to the various actors.

5 MR. KEYES: Okay. Why don't we

6 take a break for lunch.

7 VIDEOGRAPHER: The time is

8 1:24 p.m., and we're off the record.

9 (Off the record at 1:24 p.m.)

10 VIDEOGRAPHER: The time is

11 2:08 p.m., and we're on the record.

12 QUESTIONS BY MR. KEYES:

13 Q. Professor McGuire, do you have

14 McGuire Exhibit 6 in front of you, which is

15 your report regarding nuisance?

16 A. Yes, I do.

17 Q. Is it accurate to say that in

18 this report you attempt to measure the costs

19 of harms that result from the use or abuse of

20 all opioids in Summit County and Cuyahoga

21 County?

22 A. No, that wouldn't be accurate.

23 Q. Do you attempt to distinguish

24 between the costs attributable to the use or

25 abuse of illicit opioids versus the use or

1 abuse of prescription opioids?

2 A. Well, I'm interested in harms

3 and costs in either case.

4 Q. In your report, do you attempt

5 to distinguish between the costs attributable

6 to the use and abuse of illicit opioids

7 versus the use and abuse of prescription

8 opioids?

9 MR. SOBOL: Objection. Asked

10 and answered.

11 THE WITNESS: I'm interested in

12 the sum of the effects of both of

13 those.

14 QUESTIONS BY MR. KEYES:

15 Q. Okay. But in your

16 calculations, do you break out the costs that

17 you quantify between the costs that are

18 attributable to the use or abuse of illicit

19 opioids versus the costs resulting from the

20 use or abuse of prescription opioids?

21 MR. SOBOL: Objection. Asked

22 and answered.

23 THE WITNESS: Generally I just

24 look at the total.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Okay. In fact, if you look at

3 paragraph 39 on page 22...

4 A. I'm there.

5 Q. The last paragraph you say, "As

6 a reminder, the harms I attribute to

7 shipments of prescription opioids includes

8 harms due to the subsequent use of other

9 opioids, e.g., heroin, fentanyl, caused by

10 the shipments."

11 Correct?

12 A. That's correct.

13 Q. Okay. So anywhere in your

14 report do you separate out the costs that you

15 quantify based on harms resulting from the

16 use or abuse of illicit opioids from the use

17 or abuse of prescription opioids?

18 MR. SOBOL: Objection. Asked

19 and answered several times now.

20 THE WITNESS: I think I just

21 look at the totals.

22 QUESTIONS BY MR. KEYES:

23 Q. Anywhere in your report do you

24 separate out the costs that you quantified

25 based on harms resulting from the use or

1 abuse of prescription opioids that were

2 diverted from the harms resulting from the

3 use or abuse of prescription opioids that

4 were used by the people to whom they were

5 prescribed?

6 A. I understand what you mean by

7 diverted.

8 Do you mean -- it's hard to

9 give a clear answer to that question.

10 I looked at the total about

11 whether the harm came from a diversion or

12 whether the harm came from the direct

13 consumption of the person who was prescribed

14 the opioids.

15 Q. You looked at the total,

16 including both of those categories?

17 A. It could have been in either

18 category, yes.

19 Q. Did you separately measure the

20 costs of the harms resulting from people

21 using or abusing prescription opioids that

22 were diverted as opposed to prescription

23 opioids that were used by the people to whom

24 they were prescribed?

25 A. Yeah.

1 MR. SOBOL: Objection. Asked

2 and answered.

3 THE WITNESS: I think it's the

4 same question, but I just looked at

5 the total, which could have been due

6 to either diversion or consumption of

7 the person to whom it was prescribed.

8 QUESTIONS BY MR. KEYES:

9 Q. Do you separately measure the

10 cost of the harms resulting from people using

11 or abusing prescription opioids that were

12 either made or distributed by the defendants

13 versus harms resulting from people using or

14 abusing prescription opioids that were made

15 or distributed by entities other than the

16 defendants?

17 A. I don't attempt to distinguish

18 those made or distributed by the defendants

19 from shipments that were made or distributed

20 by those who might not have been a defendant.

21 Q. Do you, anywhere in your

22 report, Exhibit Number 2, measure the costs

23 resulting from harms that are attributable to

24 the defendants' misconduct?

25 A. No, I don't attribute these

1 harms to misconduct.

2 Q. In fact, if we look at page 27,

3 note 57, you say, quote, "In this report, I

4 assess the external costs associated with

5 prescription shipments without regard to

6 whether they were due to defendants'

7 misconduct."

8 Correct?

9 A. That's what I say there, yes.

10 Q. And that's an accurate

11 statement?

12 A. That's an accurate statement.

13 Q. And you say, quote, "I thus use

14 the share of harms due to shipments without

15 multiplying by Professor Rosenthal's estimate

16 of the share of shipments due to misconduct,"

17 end quote.

18 Do you see that?

19 A. I do, yes.

20 Q. And is that an accurate

21 statement?

22 A. Yes, it is.

23 Q. You state in your report that

24 you were advised by counsel for the

25 plaintiffs that they intend to prove that the

1 public nuisance regarding the shipment of
 2 prescription opioids arose in substantial
 3 part from the unlawful conduct by the
 4 defendants.
 5 A. I'm sorry, where are you now?
 6 Q. Page 16, paragraph 28.
 7 A. Okay. I see.
 8 Q. Okay. Do you see that
 9 sentence?
 10 A. I see the sentence.
 11 Q. Okay. What does, quote, "in
 12 substantial part" mean?
 13 A. In large part.
 14 Q. And what specific objective
 15 criteria do you -- would you use to capture
 16 the notion of "in substantial part"?
 17 MR. SOBOL: Objection.
 18 THE WITNESS: Well, this is
 19 something that I've been advised by
 20 counsel that they intend to do. It's
 21 not something that I intend to do.
 22 QUESTIONS BY MR. KEYES:
 23 Q. Which counsel advised you of
 24 this?
 25 A. I don't remember.

1 Q. Okay. But you don't quantify
 2 in this report the cost of harms from the
 3 public nuisance that are linked up with
 4 defendants' unlawful conduct, right?
 5 MR. SOBOL: Objection.
 6 THE WITNESS: Yeah, that's
 7 correct. That's correct.
 8 QUESTIONS BY MR. KEYES:
 9 Q. Did you attempt anywhere in
 10 your report to quantify the cost of harms
 11 from the public nuisance that did not arise
 12 from the defendants' unlawful conduct?
 13 MR. SOBOL: Objection.
 14 THE WITNESS: I was trying to
 15 make sure I get the logic of your
 16 question correct.
 17 The application of the
 18 Rosenthal share, which I did not do in
 19 this report in terms of quantifying
 20 harms, can be interpreted as some that
 21 were due to misconduct and the balance
 22 not due to misconduct.
 23 So in that I sum both those
 24 things, I do count both those due to
 25 misconduct in the Rosenthal sense as

1 well as those not due to misconduct.
 2 QUESTIONS BY MR. KEYES:
 3 Q. And so anywhere in your report
 4 do you quantify the cost of harms from the
 5 public nuisance that did not arise from the
 6 unlawful conduct of the defendants?
 7 MR. SOBOL: Objection.
 8 You can answer.
 9 THE WITNESS: Okay. Well, I
 10 think I was answering your question in
 11 perhaps a too narrow way. I was
 12 answering it with respect to the
 13 Rosenthal question of the -- that
 14 particular unlawful -- what will be
 15 alleged unlawful act, which is the
 16 misleading advertising.
 17 What other lawful/unlawful
 18 elements of a definition here, I'm not
 19 in a position to say.
 20 QUESTIONS BY MR. KEYES:
 21 Q. Okay. You said before that you
 22 didn't quantify the cost of the harms from
 23 the public nuisance that were due to
 24 defendants' misconduct.
 25 MR. SOBOL: Objection. Asked

1 and answered.
 2 THE WITNESS: I didn't separate
 3 those out from the total. They would
 4 be included in the total.
 5 QUESTIONS BY MR. KEYES:
 6 Q. Right.
 7 So my question was: Anywhere
 8 in your report do you quantify the cost of
 9 harms from the public nuisance that did not
 10 arise from the defendants' unlawful conduct?
 11 A. In answering, I'm not equating
 12 misconduct as studied by Professor Rosenthal
 13 with unlawful conduct -- sorry, unlawful
 14 conduct, which I understand to be a broader
 15 term.
 16 So if I answer it in the sense
 17 of Rosenthal, I count both: those
 18 attributable to Rosenthal misconduct and
 19 those not attributable to Rosenthal
 20 misconduct. That's an element of lawful.
 21 There may well be other
 22 elements of what is lawful and unlawful that
 23 apply here that I'm not in a position to talk
 24 about.
 25 Q. And the costs that you have

1 quantified in this report are the costs of
 2 harms in Summit County and Cuyahoga County,
 3 correct?
 4 A. That's generally correct.
 5 Q. Did you back out of those cost
 6 calculations the cost of harms that occurred
 7 in Akron or Cleveland?
 8 A. My estimates were county-level
 9 only, without attributing them to
 10 jurisdictions within the county.
 11 Q. Right.
 12 So did you back out of those
 13 calculations at any point the cost of harms
 14 that occurred in the cities of Akron or
 15 Cleveland?
 16 A. I would say no, they were
 17 county-based calculations.
 18 Q. Even though the City of Akron
 19 and the City of Cleveland have been
 20 specifically excluded from the track 1 case,
 21 correct?
 22 MR. SOBOL: Objection.
 23 THE WITNESS: Well, I'm just
 24 following what I was asked to do. And
 25 the reasons, I don't know.

1 QUESTIONS BY MR. KEYES:
 2 Q. You do recognize that
 3 prescription opioids can confer positive
 4 benefits on particular individuals when used
 5 in accordance with scientifically acceptable
 6 clinical criteria?
 7 A. Yes.
 8 Q. What are those positive
 9 benefits?
 10 A. Well, there could be a
 11 reduction in pain. There could be an
 12 improvement in function.
 13 Q. Anything else?
 14 A. Those are the primary ones.
 15 Q. Do you at any point in your
 16 report quantify the benefit of prescription
 17 opioids in pain reduction?
 18 MR. SOBOL: Objection.
 19 You can answer.
 20 QUESTIONS BY MR. KEYES:
 21 Q. Not discuss it; quantify it.
 22 MR. SOBOL: Objection.
 23 THE WITNESS: What I do in my
 24 report is an assessment of the
 25 quantification of the amount of time

1 or days for which clinically
 2 appropriate use of opioids would
 3 reduce pain, which is a kind of
 4 quantification.
 5 QUESTIONS BY MR. KEYES:
 6 Q. Where in your report do you
 7 have a chart that shows the quantification of
 8 the benefit of prescription opioids in the
 9 form of pain reduction?
 10 A. I don't think I have a chart.
 11 Q. Where is the number that you
 12 calculated to show the dollar benefit of
 13 prescription opioids in the form of pain
 14 reduction?
 15 A. Okay. So you're changing the
 16 question a little bit.
 17 Quantification isn't
 18 necessarily a dollar. Quantification can be
 19 done in other units. And I responded by --
 20 part of what I did, which was a
 21 quantification in terms of days of -- days
 22 with improved pain.
 23 Do you want to see where that
 24 is? Is that -- I'm not sure what the
 25 question is now.

1 Q. Where in your report do you
 2 show the dollar value of the benefit of
 3 prescription opioids in the form of pain
 4 reduction?
 5 MR. SOBOL: Objection.
 6 THE WITNESS: In terms of the
 7 question of pain reduction, I didn't
 8 need to go so far as to quantify it in
 9 terms of dollars.
 10 QUESTIONS BY MR. KEYES:
 11 Q. Do you at any point in your
 12 report quantify the benefit of prescription
 13 opioids in increased productivity?
 14 A. I analyze studies on the effect
 15 of opioids on what I -- by productivity, I
 16 mean workforce productivity, and determine
 17 that whatever benefits there are are less
 18 than costs, which is sufficient for me to be
 19 able to say that with respect to this
 20 category of potential benefits and costs, the
 21 costs exceed the benefits.
 22 Q. Did you at any point in your
 23 report quantify the benefit of prescription
 24 opioids in the form of increased
 25 productivity?

1 MR. SOBOL: Objection. Asked
2 and answered.
3 THE WITNESS: I think this is
4 the same question.
5 And my answer, I hope, will be
6 the same, which is that I studied the
7 research literature on the effects of
8 prescription opioids on workforce
9 productivity, and as a result of that
10 study, concluded that the positive
11 effects on productivity are outweighed
12 by the negative effects on
13 productivity.
14 So there's no net benefit to be
15 had in the benefit column in terms of
16 dollars or in terms of anything else
17 with respect to opioids on that score.
18 And that was enough for me to be able
19 to say I'm going to be conservative
20 and not count those additional costs
21 that exceed the benefits.
22 QUESTIONS BY MR. KEYES:
23 Q. Anywhere in your report do you
24 show the dollar value of the benefit of
25 prescription opioids in the form of increased

1 productivity?
2 MR. SOBOL: Objection. Asked
3 and answered.
4 THE WITNESS: I understand this
5 to be the same question, and if for
6 some reason it's a different question,
7 I'm happy to try to answer that new
8 question.
9 What I did in my report was to
10 investigate the research literature on
11 the effects of opioid prescriptions on
12 workforce productivity and determined
13 that the negative effects of opioid
14 prescriptions outweighed the positive
15 effects in terms of productivity.
16 So once that's established,
17 quantification in dollar terms isn't
18 necessary in order to say that the
19 costs exceed the benefits.
20 So as long as, you know, costs
21 are greater than benefits, it's not --
22 I don't need to know exactly the
23 dollar benefits in order to make a
24 determination of my assignment in the
25 report.

1 QUESTIONS BY MR. KEYES:
2 Q. Did you examine any indirect
3 benefits from the use of prescription
4 opioids?
5 A. I'm sorry, what do you mean by
6 "indirect benefits"?
7 Q. Nondirect.
8 A. Do you have another synonym you
9 can give me?
10 Q. No.
11 You would agree that increased
12 productivity and reduction of pain are direct
13 benefits from the use of prescription
14 opioids?
15 MR. SOBOL: Objection.
16 THE WITNESS: Well, people use
17 these terms in different ways, so I'm
18 just trying to find out -- even the
19 word "indirect" in the literature is
20 used in different ways by different
21 people.
22 QUESTIONS BY MR. KEYES:
23 Q. Did you examine any indirect
24 savings to Summit County or Cuyahoga County
25 from the mortality that results from the use

1 or abuse of opioids?
2 MR. SOBOL: Objection.
3 THE WITNESS: Well, I'm still
4 not sure what you mean by "indirect"
5 here, so if you can help me with that,
6 I'll give it a shot.
7 QUESTIONS BY MR. KEYES:
8 Q. Sure.
9 I thought you mentioned earlier
10 in the deposition in response to a question
11 that as a result of the mortality, there
12 would be dollar impacts -- there could be
13 dollar impacts on Summit County or Cuyahoga
14 County?
15 A. Yes, I did that.
16 Q. And some of those could be
17 positive dollar impacts, and some of those
18 could be negative, correct?
19 A. Well, that's not what I said
20 earlier. I used an example of what I would
21 call a negative impact, which is if someone
22 dies, then -- I think the example I used was
23 tax revenue, that if there's, for example, a
24 local income tax or even a sales tax, some of
25 a person's income would not be available for

1 their consumption. They would be
 2 contributing to public revenues.
 3 Q. And why do you call that a
 4 negative effect?
 5 A. Well, it's a negative effect on
 6 the county because the income is gone from
 7 the individual, and that means less tax
 8 collections.
 9 Q. And could there be positive
 10 dollar impacts on Summit County or Cuyahoga
 11 County from the mortality that you attempt to
 12 quantify?
 13 MR. SOBOL: So is the county
 14 better off with the people being
 15 killed by opioids?
 16 MR. KEYES: That's not my
 17 question.
 18 You can answer my question, not
 19 his. He can ask you questions later.
 20 THE WITNESS: No, generally
 21 not.
 22 QUESTIONS BY MR. KEYES:
 23 Q. When you referred earlier to
 24 studying the economic literature on workforce
 25 productivity and the impact of opioids on

1 that productivity, what studies did you look
 2 at?
 3 A. There's a set of studies that I
 4 refer to in my report, are the ones I looked
 5 at.
 6 Q. Okay. Can you name any of
 7 them?
 8 A. Right now?
 9 Q. Yeah.
 10 A. Yes. The authors include
 11 Kilby, I think Angela is her first name;
 12 Janet Currie and Molly Schnell; Alan Krueger;
 13 a first authored paper by Aliprantis. And
 14 there's one or two more that I can't remember
 15 right now.
 16 Q. Did any of the studies you just
 17 listed examine the impact of prescription
 18 opioids on worker productivity in Summit
 19 County or Cuyahoga County?
 20 A. I think they would have --
 21 there're broader studies that would have
 22 included -- I'd have to go back and check
 23 study by study, but most of them were
 24 broad-based studies that might have been the
 25 whole United States or perhaps large counties

1 in the United States that likely would
 2 have -- some of them, I'm sure, included
 3 Summit and Cuyahoga.
 4 Q. Why are you so sure?
 5 A. Because it's my understanding
 6 what the studies did.
 7 Q. Did you look at any studies
 8 that examined the data specific to Summit
 9 County and Cuyahoga County?
 10 A. Examined the data with respect
 11 to what?
 12 Q. Did you look at any studies
 13 that examined data specific to Summit County
 14 or Cuyahoga County regarding the impact of
 15 prescription opioids on worker productivity?
 16 A. One of the Ohio reports that --
 17 I think it's -- I refer to it as a Swank
 18 report -- is Ohio-specific, and it talks
 19 about productivity for Ohio. And I don't
 20 remember whether it broke down its findings
 21 county by county, but it would have applied
 22 to our bellwether.
 23 Q. In your report you reference
 24 alcohol as a potential analogy.
 25 Do you recall that?

1 MR. SOBOL: Objection.
 2 THE WITNESS: I do.
 3 QUESTIONS BY MR. KEYES:
 4 Q. Yes?
 5 MR. SOBOL: Objection.
 6 QUESTIONS BY MR. KEYES:
 7 Q. Do you recall that?
 8 MR. SOBOL: Objection.
 9 THE WITNESS: I do recall that.
 10 QUESTIONS BY MR. KEYES:
 11 Q. And do you remember saying that
 12 alcohol yields a, quote, "overwhelming net
 13 cost to society"?
 14 A. I was --
 15 MR. SOBOL: No, that's a
 16 mischaracterization of the report.
 17 Are you referring to either
 18 report?
 19 MR. KEYES: I'm referring to a
 20 specific statement he made.
 21 THE WITNESS: Yeah, let me take
 22 a look. I think that would clear up
 23 any confusion here.
 24 Okay. So this is paragraph 27.
 25 I think there's just one paragraph,

1 yeah, where it's not exactly an
2 analogy, but it's a kind of
3 clarification that the -- another, you
4 know, potential in this case, I guess
5 the substance that might be considered
6 a -- that may have overwhelming costs
7 versus benefits, is what I'm
8 mentioning here, is not sufficient for
9 it to be regarded as a public
10 nuisance.
11 QUESTIONS BY MR. KEYES:
12 Q. I'm not sure I understood your
13 answer.
14 You said that even though
15 alcohol may cause overwhelming net costs to
16 society, it is not necessarily a public
17 nuisance?
18 MR. SOBOL: Objection. That's
19 a misreading of the report.
20 MR. KEYES: I'm not asking
21 about the report. I'm asking about
22 your answer.
23 THE WITNESS: What I -- my
24 answer is that I didn't use it as an
25 analogy. I use it as an illustration

1 of a situation in which the costs may
2 be overwhelming in relation to the
3 benefits. And that's a hypothetical,
4 as I say here. I'm sure you know. I
5 didn't do that analysis. I'm just
6 saying, well, this might be true.
7 Society might decide to condone
8 that and not pursue any legal theory
9 of fault related to alcohol.
10 QUESTIONS BY MR. KEYES:
11 Q. Because society has determined
12 that buying and selling and consuming alcohol
13 within certain constraints is permissible?
14 A. That might be part of it.
15 Q. And yet selling and
16 distributing prescription opioids is legal
17 within certain constraints, correct?
18 A. Well, I don't like to talk too
19 much about what is legal and illegal, but my
20 understanding is that some of that is fine.
21 Q. And if I understand you
22 correctly, you're saying alcohol, because of
23 society's determination that it can be a
24 legal activity, it is not a public nuisance
25 even though it can create an overwhelming net

1 cost to society, right?
2 MR. SOBOL: Objection.
3 Mischaracterizes the testimony.
4 THE WITNESS: Yeah, that's not
5 exactly what I said.
6 QUESTIONS BY MR. KEYES:
7 Q. You said, "An economic weighing
8 of the benefits versus costs of the
9 prevalence of alcohol could yield an
10 overwhelming net cost to society, yet for
11 myriad reasons, society condones the
12 prevalence of alcohol, and subject to its
13 regulation and appropriate use, selling,
14 buying and consuming alcohol are legal
15 activities."
16 A. Yes.
17 MR. SOBOL: Objection.
18 Mischaracterizes the testimony. It's
19 only one portion of the answer that
20 you just read back.
21 QUESTIONS BY MR. KEYES:
22 Q. I just read you what you said
23 in your report.
24 A. I understand that.
25 Q. Okay.

1 A. And as that sentence says "that
2 for myriad reasons."
3 So I understood your question
4 to be asking about the lawful/unlawful, the
5 condonance of selling alcohol, but there's
6 other things that may factor into that.
7 Q. What differentiates alcohol
8 from prescription opioids if they can both
9 create an overwhelming net cost to society
10 yet be condoned by society and be legal
11 activities within certain constraints?
12 MR. SOBOL: Objection.
13 THE WITNESS: Okay. First of
14 all, I'm -- I don't know that that's
15 true with respect to alcohol. I'm
16 only using that as an illustration to
17 capture that the overwhelming cost
18 versus benefits isn't a sufficient
19 condition in order to have someone
20 qualify from a legal perspective as a
21 public nuisance.
22 QUESTIONS BY MR. KEYES:
23 Q. And if it's not sufficient,
24 then what else do you need to qualify from a
25 legal perspective as a public nuisance as you

1 approach it as an expert in this case?

2 MR. SOBOL: Objection. Scope.

3 THE WITNESS: Well, I

4 understood my assignment to be guided

5 by a definition of public nuisance

6 that is based on the law, that I

7 interpreted as having three components

8 that we discussed earlier today.

9 QUESTIONS BY MR. KEYES:

10 Q. And that's the legal definition

11 that you're applying that you got from

12 counsel, correct?

13 A. Well, the legal definition is

14 in paragraph 7 or something in this second

15 report. And my interpretation of that in

16 terms that an economist can work with are, I

17 think, in paragraph 38.

18 Q. So in determining that there's

19 a public nuisance, you are applying your

20 interpretation in paragraph 38 of a legal

21 definition that you were supplied in

22 paragraph 7?

23 A. Well, I broke down the -- what

24 I thought to be the essential elements of

25 paragraph 7, which is a legal definition, and

1 I said, here's what I think I need to do.

2 And that's -- I am being transparent. That's

3 what I said I needed to do; that's what I

4 did.

5 Q. And you're not applying the

6 standard for a public nuisance that you

7 described in economic terms in paragraph 16

8 of your report?

9 MR. SOBOL: Objection.

10 QUESTIONS BY MR. KEYES:

11 Q. Correct?

12 MR. SOBOL: Objection.

13 Mischaracterizes the testimony.

14 THE WITNESS: Well, I think as

15 we discussed earlier, this is not a

16 definition. If you want a definition,

17 it's paragraph 38 where I use the word

18 "definition" and I think explain quite

19 clearly how I define a public

20 nuisance.

21 QUESTIONS BY MR. KEYES:

22 Q. You calculate what you think

23 are the costs of mortality as a result of the

24 opioid epidemic in Summit County and Cuyahoga

25 County, correct?

1 A. That's not correct.

2 Q. How is that incorrect?

3 A. Because that's not what I do.

4 Q. You have an entire Appendix C

5 on mortality, correct?

6 A. Correct.

7 Q. And you identify mortality as

8 one of the harms that results from the opioid

9 epidemic, correct?

10 A. That's correct.

11 Q. And then you quantify the costs

12 of that harm, correct?

13 A. Yes.

14 Q. Okay. And --

15 A. But still, I'm not confirming

16 your question.

17 Q. When you quantify the costs of

18 mortality as a harm that results from the

19 opioid epidemic, you include all deaths

20 attributable to overdoses on opioids?

21 A. First of all, that's not what I

22 do.

23 Q. Why not?

24 How is it wrong?

25 A. Because it's not what I do.

1 Q. Tell me how it's wrong then.

2 A. I do not -- it's wrong to say

3 that I quantify mortality costs due to the

4 opioid epidemic. I don't do that.

5 Q. What do you do?

6 A. What I do is contained in my

7 report, which is to quantify the harm due to

8 shipments.

9 Q. Okay. You purport to quantify

10 the costs of mortality as a harm attributable

11 to shipments of opioids, correct?

12 MR. SOBOL: Objection.

13 QUESTIONS BY MR. KEYES:

14 Q. Is that correct?

15 MR. SOBOL: Objection.

16 THE WITNESS: Do you mind

17 reading it to me again? Sorry.

18 QUESTIONS BY MR. KEYES:

19 Q. You purport to quantify the

20 costs of mortality as a harm attributable to

21 shipments of opioids, correct?

22 MR. SOBOL: Objection.

23 THE WITNESS: Yeah, that sounds

24 right to me.

25

1 QUESTIONS BY MR. KEYES:

2 Q. And in doing so, your

3 calculations include deaths from overdoses on

4 opioids that you say are attributable to

5 shipments of opioids, correct?

6 A. That's correct.

7 Q. And those deaths include

8 overdoses on illegal opioids as well as

9 deaths on -- from overdoses of prescription

10 opioids, correct?

11 A. That's also correct.

12 Q. And those deaths include

13 overdoses on prescription opioids that were

14 diverted as well as deaths from overdoses on

15 prescription opioids that were prescribed to

16 the person who died?

17 A. They would include deaths for

18 the person who received the prescription as

19 well as someone who might have taken those

20 pills if they were resold or diverted in some

21 way.

22 Q. In your calculations, do you

23 account for the fact that some of the

24 opioid-related deaths in your calculations

25 would have occurred at some point in the

1 absence of the users ever using prescription

2 opioids?

3 MR. SOBOL: Objection.

4 THE WITNESS: What I do by

5 attributing deaths to shipments, I

6 address this issue by asking the

7 question that -- asking the -- that

8 logical question: If the shipments

9 had been higher or lower, would the

10 death rates have been higher or lower.

11 And the empirical connection

12 that's established between that means

13 that the deaths that I count are

14 caused by the shipments.

15 QUESTIONS BY MR. KEYES:

16 Q. Now when you say you "addressed

17 that issue," you're saying you address that

18 issue by using percentages you receive from

19 Professor Cutler, correct?

20 A. That's correct, yes.

21 Q. Okay. So does that methodology

22 account for the fact that if there had been

23 no prescription shipment -- opioid shipment,

24 some people still would have used an illegal

25 drug and still would have died?

1 A. It does, yes.

2 Q. How so?

3 A. Well, Professor Cutler's

4 method, which is what we're talking about

5 here, attributes a share of opioid-related

6 deaths to shipments, not 100 percent. So

7 it's not attributing -- sorry -- not

8 attributing all deaths to opioids to

9 shipments.

10 In fact, the methodology is

11 designed to be able to distinguish between

12 deaths that might have occurred otherwise and

13 those that can be reliably attributed to

14 shipments.

15 Q. And in quantifying what you say

16 are the costs of mortality, you use the VSL,

17 correct?

18 A. I do, yes.

19 Q. What is the VSL?

20 A. VSL is an abbreviation for

21 something called the value of a statistical

22 life.

23 Q. And you cite six studies in the

24 section where you attempt to quantify the

25 costs of mortality, correct?

1 MR. SOBOL: Objection.

2 THE WITNESS: I would have to

3 look to see how many I cited.

4 QUESTIONS BY MR. KEYES:

5 Q. Which of those six studies uses

6 the VSL, if any?

7 A. Well, some do. I'd have to go

8 back and look.

9 Would you like me to do that?

10 Q. Why don't you look at page 61.

11 A. All right. So what are you

12 asking me?

13 Q. I asked you which of the

14 studies you cite in your discussion actually

15 uses the VSL.

16 A. All right. Well, the one I

17 discuss in the paragraph on page 61 uses the

18 VSL.

19 Q. Is it your understanding that

20 the VSL is usually used for regulatory

21 purposes?

22 A. Well, it's used for many

23 purposes, but including regulatory purposes,

24 yes.

25 Q. Have you ever used the VSL to

1 quantify costs in a lawsuit?

2 A. I don't think I have, no.

3 Q. You calculated the costs of

4 morbidity in your report?

5 A. Aspect of the cost of

6 morbidity.

7 Q. That aspect being the number of

8 people who have opioid use disorder?

9 A. That aspect being the elevated

10 health care costs associated with opioid use

11 disorder.

12 Q. And you calculate what you

13 think are the number of people with opioid

14 use disorder arising from shipments?

15 A. I, again, apply results from

16 Professor Cutler to make that determination,

17 yes.

18 Q. In your calculations of the

19 number of people with opioid use disorder as

20 a result of shipments, you do not distinguish

21 between people who used illicit opioids

22 versus prescription opioids, correct?

23 A. Well, this is the same issue

24 that you asked about with respect to

25 mortality. The methodology applied by

1 Professor Cutler is explicitly designed to

2 sort that out and attribute the, in this

3 case, disease due to the shipments.

4 Q. But you don't distinguish

5 between people who have the disease as a

6 result of using an illicit opioid versus

7 people who have the disease as a result of

8 using prescription opioids --

9 MR. SOBOL: Objection.

10 QUESTIONS BY MR. KEYES:

11 Q. -- correct?

12 MR. SOBOL: Objection. Asked

13 and answered.

14 THE WITNESS: Well, what is

15 important for me is to distinguish

16 those that are due to shipments and

17 not due to shipments, and due to

18 shipments could have different routes

19 of cause.

20 And what -- I have that -- the

21 precise answer that I need from

22 Professor Cutler's report.

23 QUESTIONS BY MR. KEYES:

24 Q. So your calculations include

25 people who have opioid use disorder,

1 regardless of whether they used an illicit

2 opioid or a prescription opioid, correct?

3 MR. SOBOL: Objection. Asked

4 and answered several times.

5 THE WITNESS: Well, it's -- the

6 question I'm called to answer is how

7 much of the opioid disease is due to

8 shipments, and I have very good

9 estimates of that from Professor

10 Cutler.

11 QUESTIONS BY MR. KEYES:

12 Q. Right.

13 But in doing your calculations

14 and identifying the people with opioid use

15 disorder, did you limit yourself to people

16 who have opioid use disorder as a result of

17 using prescription opioids?

18 MR. SOBOL: Objection. Asked

19 and answered.

20 THE WITNESS: I began with a

21 total number and then took a share of

22 that total number that's attributable

23 to shipments. That share could have

24 come from either of those groups.

25

1 QUESTIONS BY MR. KEYES:

2 Q. Did you look at any data sets

3 specific to Summit County or Cuyahoga County

4 regarding the prevalence of opioid use

5 disorder?

6 MR. SOBOL: Final or draft?

7 Not drafts.

8 QUESTIONS BY MR. KEYES:

9 Q. Did you look at any data sets

10 specific to Summit County or Cuyahoga County

11 regarding the prevalence of opioid use

12 disorder?

13 A. I'm not 100 percent sure. The

14 NSDUH -- sorry. A data set that's National

15 Survey on Drug Use and Health, affectionately

16 called NSDUH, has some sub-national and, I

17 think for some years, some sub-state

18 information. I may have looked at that at

19 some point.

20 Q. Can you be any more specific

21 other than "may have looked at"?

22 A. Not right now, sorry.

23 Q. Did you look at any Medicaid

24 data regarding the prevalence of opioid use

25 disorder in Summit County or Cuyahoga County?

1 A. Yes.

2 Q. What data did you look at?

3 A. There was at one point

4 consideration of a claims data set that

5 included some Medicaid.

6 Q. What data set are you referring

7 to?

8 A. Well, it was a data set that

9 was available by a claims processor, and I

10 don't remember the name.

11 Q. Where did you get that data?

12 A. I didn't ever get it.

13 Q. You considered looking at it

14 but did not look at it?

15 A. Well, by "look at data" I mean

16 look at, in some cases, summaries of data.

17 And with respect to Medicaid, the coverage

18 was poor and unreliable for a basis for

19 estimates.

20 Q. What makes you say it was poor

21 and unreliable?

22 A. Looking at the tables that had,

23 you know, for example, number of people who

24 were covered by Medicaid in different parts

25 of the state.

1 Q. What criteria did you use to

2 decide it was, quote, poor and unreliable?

3 A. Well, my professional

4 experience in doing empirical work, you need

5 a certain amount of observations before you

6 can really say anything.

7 Q. Did you analyze any data from

8 the Summit County ADM Board to determine the

9 prevalence of opioid use disorder in that

10 county?

11 A. I'd have to go back and see

12 what I did with the ADM Board.

13 Q. Well, sitting here today, did

14 you look at that data at any point?

15 MR. SOBOL: Objection. Asked

16 and answered.

17 THE WITNESS: I would have to

18 go back and take a look to remind

19 myself.

20 QUESTIONS BY MR. KEYES:

21 Q. If you had used it, you would

22 have cited it in your report, correct?

23 A. Yes, I believe I would have.

24 Q. Did you analyze any claims data

25 from the Cuyahoga County ADAMHS Board to

1 determine the prevalence of opioid use

2 disorder in that county?

3 A. No, I didn't analyze any claims

4 data for that purpose.

5 Q. In your calculations, you

6 assume that the prevalence of opioid use

7 disorder in Cuyahoga County and Summit County

8 is the same as the national rate of

9 prevalence, correct?

10 A. Yes, it's a general assumption,

11 which is widely regarded as being

12 conservative.

13 Q. Widely regarded by whom as

14 being conservative?

15 A. By people who -- researchers

16 who study this field.

17 Q. Can you point me to someone

18 specific who says that by looking at national

19 data you're being conservative?

20 A. Well, there's two senses in

21 which it's conservative. One sense in which

22 NSDUH is conservative, it misses people who

23 may be institutionalized. Respondents may be

24 reluctant to acknowledge all their drug

25 history. Both of those things would lead to

1 undercounts.

2 And then with respect to the

3 local jurisdictions here, if you look at the

4 death rate from opioids, the rate is greater

5 in our bellwethers than the difference in the

6 rates of opioid use disorder, implying that

7 the local counts for opioid use disorder are

8 also underestimates for our bellwethers.

9 Q. To estimate the excess costs

10 attributable to opioid use disorder in Summit

11 County and Cuyahoga County, you used the

12 Florence study findings?

13 MR. SOBOL: Objection.

14 QUESTIONS BY MR. KEYES:

15 Q. Is that correct?

16 MR. SOBOL: Objection.

17 THE WITNESS: Well, if you look

18 at the report, I considered a number

19 of similar studies and then ended up

20 using the Florence numbers for various

21 categories of beneficiaries, depending

22 on what their health insurance

23 coverage was.

24 But these numbers are not very

25 much different in all the studies I

1 reviewed.

2 QUESTIONS BY MR. KEYES:

3 Q. Did you do anything to validate

4 the Florence study?

5 MR. SOBOL: Objection.

6 THE WITNESS: Well, one form of

7 validation is checking to see whether

8 the literature, as we call it,

9 contains other papers that seem to

10 come to similar findings, and that's

11 exactly what validation means.

12 QUESTIONS BY MR. KEYES:

13 Q. You attempt to calculate the

14 number of NAS cases that are attributable to

15 opioid shipments, correct?

16 A. I do.

17 Q. And you first took data from

18 the Ohio Department of Health website on the

19 total hospitalizations among Ohio resident

20 newborns for NAS, neonatal abstinence

21 syndrome, correct?

22 A. That's correct.

23 Q. And you assumed that all NAS

24 cases were related to opioids, correct?

25 A. Well, that's based on data from

1 Ohio.

2 Q. What do you mean it's based

3 on --

4 A. Well, it's based -- I didn't

5 make that up. I referred to -- I'd have to

6 again look to see what the specific reference

7 is.

8 Q. Well, you --

9 A. But the information I had

10 indicated that almost all cases of NAS in

11 Ohio were due to opioids.

12 Q. What is your authority for that

13 proposition, that almost all cases of NAS in

14 Ohio were due to opioids?

15 A. I'd need to look. I don't know

16 if it's in the appendix or the text, so...

17 According to the Ohio

18 Department of Health, virtually all cases of

19 NAS are due to opioids. That's paragraph 53.

20 Q. Did you consider Professor

21 Young's opinions on NAS in doing your

22 calculations?

23 A. I don't think I needed

24 Professor Young to do this. I had Ohio data

25 for a count. I had this information from

1 Ohio about what those NAS cases were due to.

2 I had data on the relative charges of cases

3 with and without NAS. I confined my

4 assessment to only those costs, which I

5 consider to be probably the most conservative

6 part of this report. And those were the

7 elements of my calculation regarding the

8 costs due to shipments of extra NAS -- of the

9 harms due to NAS in our bellwethers.

10 Q. What is the correct term and

11 diagnostic category for infants that

12 experience withdrawal from opioids?

13 A. I think it's a -- it's within

14 the NAS category.

15 Q. Is neonatal abstinence

16 syndrome, NAS, the correct term and

17 diagnostic category for infants who

18 experience withdrawal from opioids?

19 MR. SOBOL: Objection.

20 THE WITNESS: You're outside my

21 expertise. Sorry.

22 QUESTIONS BY MR. KEYES:

23 Q. Did you do any research into

24 whether the correct term and diagnostic

25 category for infants who experience

1 withdrawal from opioids is neonatal

2 abstinence syndrome?

3 A. I think this sentence addresses

4 that. "According to the Ohio Department of

5 Health, virtually all cases of NAS are due to

6 opioids."

7 That's what I needed to know.

8 Q. Okay. Do you have an

9 understanding as to whether practitioners

10 distinguish between neonatal abstinence

11 syndrome and neonatal opioid withdrawal?

12 A. Distinguish in what way?

13 Q. When classifying or reporting

14 incidence, whether they appropriately

15 distinguish between neonatal abstinence

16 syndrome and neonatal opioid withdrawal?

17 MR. SOBOL: Objection.

18 THE WITNESS: Again, that's

19 outside my expertise.

20 QUESTIONS BY MR. KEYES:

21 Q. Did you look into that?

22 MR. SOBOL: Objection. Asked

23 and answered.

24 THE WITNESS: I think the

25 statement that virtually all cases of

1 NAS are due to opioids is exactly what
 2 I need to know.
 3 QUESTIONS BY MR. KEYES:
 4 Q. In your calculations on the
 5 cost of crime that you say results from
 6 shipments, you used NIBRS data?
 7 A. That's correct.
 8 Q. Did you look at any data
 9 specific to Summit County or Cuyahoga County?
 10 A. Yes.
 11 Q. What data did you look at that
 12 was specific to Summit County or Cuyahoga
 13 County?
 14 A. The data in the NIBRS includes
 15 the county indicator. Those were the crime
 16 counts I used.
 17 Q. Did you consider whether the
 18 crime rate has stayed the same, fallen or
 19 risen in recent years?
 20 A. Yes.
 21 Q. What did you conclude?
 22 A. Well, I concluded very
 23 specifically what the rates were in different
 24 years.
 25 Q. And has the rate fallen in the

1 last two years in either Summit County or
 2 Cuyahoga County?
 3 A. I'd have to go back and check,
 4 but I have the numbers, which is what I need.
 5 Q. Based on NIBRS, you're saying?
 6 A. That's right.
 7 Q. Did you --
 8 MR. SOBOL: Do you want him to
 9 look or not?
 10 MR. KEYES: No. If he has it
 11 in his report, then I can look at the
 12 report.
 13 QUESTIONS BY MR. KEYES:
 14 Q. Did you look at any databases
 15 specific to Summit County and Cuyahoga County
 16 regarding crimes such as the LERMS database?
 17 A. Well, I did look at
 18 county-specific data, yes, in the form of the
 19 NIBRS.
 20 Q. Did you look at the LERMS
 21 database that is specific to Summit County or
 22 Cuyahoga County?
 23 A. No, I used the NIBRS.
 24 Q. When you attempted to quantify
 25 the costs that you attribute to children

1 being mistreated as a result of opioid
 2 shipments, am I correct in understanding that
 3 you rely on Dr. Young to identify the number
 4 of children who are subject to maltreatment
 5 in Summit County and Cuyahoga County?
 6 A. Yes, I believe that's correct.
 7 Q. And you rely on Cutler's
 8 percentage to estimate the share of
 9 maltreated children due to opioid shipments?
 10 A. That's also correct.
 11 Q. And by taking those two
 12 figures, you can identify, you think, the
 13 number of children whose parents mistreated
 14 them as a result of opioid shipments?
 15 A. That's correct.
 16 MR. SOBOL: Objection.
 17 THE WITNESS: That's correct.
 18 QUESTIONS BY MR. KEYES:
 19 Q. For purposes of your
 20 calculations, you assume that if parents had
 21 not used opioids, they would not have
 22 mistreated their children, correct?
 23 MR. SOBOL: Objection.
 24 Objection.
 25 THE WITNESS: This is a -- this

1 is a part of the David methodology,
 2 David Cutler's methodology.
 3 QUESTIONS BY MR. KEYES:
 4 Q. So you again refer to Professor
 5 Cutler and what he did?
 6 A. I do refer to Professor Cutler
 7 and what he did. This is a question he
 8 addressed.
 9 Q. You say in your report that
 10 based on the Perri, Kessler and Egilman
 11 reports, quote, "The manufacturing defendants
 12 knew or should have known that they were
 13 making misleading statements about the safety
 14 and efficacy of the prescription opioids they
 15 manufactured."
 16 A. Do you mind pointing to where
 17 you're reading?
 18 Q. Page 50, paragraph 90.
 19 A. Okay. I'm there.
 20 Q. And you continue that, quote,
 21 "Marketing by the defendants was consistent
 22 in conveying the message that the risk of
 23 addiction in patients taking opioids for pain
 24 was minimal, the tolerance, dependence and
 25 addiction were not serious concerns, and that

1 opioids were the safest and most effective
 2 treatment for chronic/long-term pain."
 3 Do you see that?
 4 A. I do see that.
 5 Q. And that statement is --
 6 MR. SOBOL: Misquoted.
 7 QUESTIONS BY MR. KEYES:
 8 Q. That statement is also based on
 9 the Perri, Kessler and Egilman report?
 10 A. Yes.
 11 Q. Okay. Which defendants engaged
 12 in this marketing with misleading statements?
 13 MR. SOBOL: Objection. Scope.
 14 THE WITNESS: It wasn't
 15 something that I studied.
 16 QUESTIONS BY MR. KEYES:
 17 Q. Which marketing of the
 18 defendants included these misleading
 19 statements?
 20 MR. SOBOL: Objection. Scope.
 21 THE WITNESS: That's also not
 22 something I studied.
 23 QUESTIONS BY MR. KEYES:
 24 Q. So you're relying entirely on
 25 what those three other experts have said when

1 you make these two statements?
 2 MR. SOBOL: Objection.
 3 THE WITNESS: That's not what I
 4 said, no.
 5 If you go on in the section,
 6 you'll see more.
 7 QUESTIONS BY MR. KEYES:
 8 Q. Well, I asked you what your
 9 basis -- which defendants you were talking
 10 about and which marketing you were talking
 11 about, and you said, "That's also not
 12 something I studied."
 13 I'm asking: Are you relying --
 14 when you make those statements, are you
 15 relying on what the three experts said?
 16 MR. SOBOL: Objection.
 17 THE WITNESS: Well, I'm not
 18 sure -- what "those statements" you're
 19 referring to.
 20 QUESTIONS BY MR. KEYES:
 21 Q. The two statements that I just
 22 read from your report.
 23 A. Okay.
 24 MR. SOBOL: Objection. I don't
 25 know which two statements you're

1 talking about. I see several
 2 statements.
 3 MR. KEYES: The two statements
 4 I read.
 5 THE WITNESS: Well, what I
 6 said --
 7 MR. SOBOL: Well, one of them
 8 you misread, and the other one -- are
 9 you talking about the sentences or the
 10 things within the sentence? What are
 11 you talking about?
 12 QUESTIONS BY MR. KEYES:
 13 Q. Go ahead and answer.
 14 A. Just to be sure about
 15 interpreting my answer, I interpret your
 16 question as being asking about the statements
 17 that I made in response to your questions.
 18 If I have that wrong, please
 19 let me know.
 20 Q. You say at paragraph 90, "As
 21 explained in the expert reports of Dr. Perri,
 22 Dr. Kessler and Dr. Egilman, the
 23 manufacturing defendants knew or should have
 24 known that they were making misleading
 25 statements about the safety and efficacy of

1 the prescription opioids they manufactured."
 2 Then you say, "Marketing by the
 3 defendants was consistent in conveying the
 4 message that the risk of addiction in
 5 patients taking opioids for pain was minimal,
 6 the tolerance, dependence and addiction were
 7 not serious concerns, and that opioids were
 8 the safest and most effective treatment for
 9 chronic/long-term pain."
 10 Those are statements in
 11 paragraph 90 by you.
 12 MR. SOBOL: Objection.
 13 Misstatement.
 14 QUESTIONS BY MR. KEYES:
 15 Q. I asked you what manufacturing
 16 defendants you were talking about. You said
 17 you didn't know.
 18 A. I said I didn't study it.
 19 Q. Okay.
 20 I asked you what specific
 21 statements were misleading, and you said you
 22 didn't study that.
 23 MR. SOBOL: Objection.
 24 THE WITNESS: Yes.
 25

1 QUESTIONS BY MR. KEYES:

2 Q. Then you say in the next

3 paragraph that based on your own examination

4 of publicly available documents and discovery

5 produced in this litigation, "defendants had

6 clear knowledge that the shipments had

7 negative impacts on the public health and

8 safety of communities across the nation,

9 including in the bellwether communities."

10 Do you see that?

11 A. I do.

12 Q. Okay. Which defendants are you

13 talking about there?

14 MR. SOBOL: Objection. Scope.

15 THE WITNESS: Well, I go on in

16 this section to give, for example.

17 QUESTIONS BY MR. KEYES:

18 Q. Okay.

19 A. And the "for example" refers to

20 Purdue. And then additionally in the next

21 paragraph I talk about Mallinckrodt. And

22 then in the next paragraph I talk about

23 Cardinal and McKesson.

24 Q. Okay. So in the sentence that

25 I just read to you from paragraph 91 where

1 you talk about defendants having clear

2 knowledge, you're talking about those four

3 defendants?

4 MR. SOBOL: Objection.

5 Mischaracterizes the testimony.

6 THE WITNESS: No.

7 QUESTIONS BY MR. KEYES:

8 Q. You don't cite any evidence for

9 that statement other than the four examples

10 you just listed?

11 MR. SOBOL: Objection.

12 THE WITNESS: Well, when you

13 say "for example," it doesn't mean

14 you've listed the universe of

15 activities of something.

16 QUESTIONS BY MR. KEYES:

17 Q. In your report, do you list

18 anything other than the four examples you

19 just reviewed?

20 MR. SOBOL: Objection.

21 THE WITNESS: Examples of what?

22 QUESTIONS BY MR. KEYES:

23 Q. Do you cite any evidence as

24 support for your statement that I read to

25 you, other than the four you just listed:

1 Purdue, Mallinckrodt, Cardinal and McKesson?

2 MR. SOBOL: Objection.

3 THE WITNESS: I believe I do.

4 QUESTIONS BY MR. KEYES:

5 Q. In this section, what other

6 evidence do you cite --

7 A. In this --

8 Q. -- as support for your

9 statement that, quote, "Defendants have clear

10 knowledge that the shipments had negative

11 impacts on the public health and safety of

12 communities across the nation, including in

13 the bellwether communities"?

14 MR. SOBOL: Objection.

15 THE WITNESS: I have two

16 answers to that question.

17 One is in other sections of my

18 report I discuss various public

19 documents that call attention to the

20 opioid crisis that are something that

21 defendants would have knowledge of.

22 And then the second answer to

23 the question is when a company like

24 Purdue, who I suppose we could call an

25 industry leader in opioids, has a

1 public settlement of hundreds of

2 millions of dollars, that's something

3 that I would expect other similar

4 companies would have clear knowledge

5 of and understand.

6 QUESTIONS BY MR. KEYES:

7 Q. What did Purdue's 2007

8 settlement with the United States say about

9 Summit County?

10 A. I'm not sure.

11 Q. What did Purdue's 2007

12 settlement with the United States say about

13 Cuyahoga County?

14 A. I'm not sure.

15 Q. What did that settlement say

16 about negative impacts on the public health

17 and safety of Summit County or Cuyahoga

18 County?

19 MR. SOBOL: Objection.

20 THE WITNESS: I'm not sure.

21 QUESTIONS BY MR. KEYES:

22 Q. What did the Mallinckrodt 2017

23 settlement with DOJ say about Summit County

24 or Cuyahoga County?

25 MR. SOBOL: Objection.

1 THE WITNESS: I'm not sure.
 2 QUESTIONS BY MR. KEYES:
 3 Q. What did the Mallinckrodt 2017
 4 settlement with DOJ say about negative
 5 impacts on the public health and safety of
 6 Summit County or Cuyahoga County?
 7 A. I'm not sure.
 8 Q. What did the Cardinal
 9 settlement agreement with DOJ say about
 10 Summit County or Cuyahoga County?
 11 A. I'm not sure.
 12 Q. What did the Cardinal
 13 settlement agreement with DOJ say about the
 14 public health and safety of -- negative
 15 impacts on the public health and safety of
 16 Summit County or Cuyahoga County?
 17 A. I'm not sure.
 18 Q. What did the McKesson
 19 settlement agreement with DOJ say about
 20 Summit County or Cuyahoga County?
 21 A. I'm not sure.
 22 Q. What did the McKesson
 23 settlement agreement with DOJ say about
 24 negative impacts on the public health and
 25 safety of Summit County or Cuyahoga County?

1 MR. SOBOL: This is a lot of
 2 settlements.
 3 THE WITNESS: I'm not sure.
 4 QUESTIONS BY MR. KEYES:
 5 Q. That's the four settlements you
 6 reference in your report.
 7 So sitting here today, you
 8 don't know what any of them said about any
 9 public health impacts in Summit County or
 10 Cuyahoga County --
 11 MR. SOBOL: Objection.
 12 QUESTIONS BY MR. KEYES:
 13 Q. -- correct?
 14 MR. SOBOL: Objection. That's
 15 misleading -- I mean, misstates the
 16 testimony.
 17 THE WITNESS: I'm not sure what
 18 the degree to Summit and Cuyahoga were
 19 referred to in these settlements.
 20 MR. KEYES: Okay. Why don't we
 21 take a break.
 22 VIDEOGRAPHER: The time is
 23 3:09 p.m., and we're off the record.
 24 (Off the record at 3:09 p.m.)
 25 VIDEOGRAPHER: The time is

1 3:23 p.m., and we're on the record.
 2 CROSS-EXAMINATION
 3 QUESTIONS BY MR. LONERGAN:
 4 Q. Good afternoon, Professor
 5 McGuire. My name is Sam Loneran. I'm with
 6 the law firm Arnold & Porter Kaye Scholer. I
 7 represent defendants Endo and Par in this
 8 litigation.
 9 A. Good afternoon.
 10 Q. I'm going to do my best not to
 11 ask any of the questions that Mr. Keyes asked
 12 you, but he asked you a lot of questions over
 13 the last 12 hours or so, and I can make no
 14 guarantees.
 15 But I do want to circle back to
 16 an issue that you all were discussing right
 17 before we just took our last break, and that
 18 is the opinions at paragraphs 90 and 91 of
 19 your nuisance report.
 20 Do you recall that line of
 21 questioning?
 22 A. I will when I look at the --
 23 remind myself about the paragraphs.
 24 Yes.
 25 Q. What did you rely on --

1 generally speaking, what information did you
 2 rely on in forming your opinion in
 3 paragraph 91 that defendants had clear
 4 knowledge that shipments had negative impacts
 5 on the public health and safety of
 6 communities across the nation, including the
 7 bellwether communities?
 8 A. Well, the material that I
 9 relied on is contained in this section,
 10 Section D, which is made up of several
 11 paragraphs.
 12 Q. So the material you're
 13 referring to are the four settlements that
 14 you describe in paragraphs 92 through 94?
 15 A. Well, as well as the expert
 16 reports.
 17 Q. What expert reports?
 18 A. Dr. Perri, Dr. Kessler and
 19 Dr. Egilman.
 20 Q. Anything else?
 21 A. Well, I also, I think in
 22 response to an earlier question, mentioned
 23 the -- in another section of the report
 24 discussion of public reports on the opioid
 25 crisis that would have fed into the knowledge

1 that someone in the business would have about
 2 what's happening.
 3 Q. Anything else?
 4 A. That's all I can think of.
 5 Q. And are those answers the same
 6 if I'm asking you about the opinion you issue
 7 in paragraph 90 of your nuisance report where
 8 you say the manufacturing defendants knew or
 9 should have known that they were making
 10 misleading statements about the safety and
 11 efficacy of the prescription opioids they
 12 manufacture?
 13 A. Yes, it would.
 14 Q. You didn't rely on any other
 15 information for that opinion?
 16 MR. SOBOL: Objection.
 17 THE WITNESS: Well, I noted
 18 this section and then made reference
 19 to the public reports, you know.
 20 QUESTIONS BY MR. LONERGAN:
 21 Q. Did you rely on any firsthand
 22 information that you have in forming either
 23 of those opinions?
 24 A. No, I would say not.
 25 Q. Do you believe a juror could

1 reach the same opinions as you've reached in
 2 paragraph 90 and 91 of your nuisance report
 3 if they reviewed the same materials that you
 4 reviewed?
 5 MR. SOBOL: Objection. Scope.
 6 THE WITNESS: I'm not sure.
 7 QUESTIONS BY MR. LONERGAN:
 8 Q. Do you have any reason to
 9 believe that a juror could not reach those
 10 opinions reviewing those same materials?
 11 MR. SOBOL: Objection. Scope.
 12 THE WITNESS: I really don't
 13 know one way or the other.
 14 QUESTIONS BY MR. LONERGAN:
 15 Q. What expertise did you apply in
 16 reaching those opinions?
 17 A. Primarily it's relying on the
 18 very explicit statements of experts who are
 19 medical experts with respect to the
 20 manufacture and marketing of opioids. So
 21 it's, you know, directly from people who know
 22 about this that I drew my conclusions.
 23 And then I think the -- with
 24 respect to the other material referenced in
 25 this section, it's -- I don't know if you

1 need to be an economist. And you probably
 2 don't need to be an economist to say that,
 3 for example, in the case of Purdue, when
 4 there's a multi-hundred million dollar
 5 settlement that acknowledged misleading
 6 advertising, that that would reasonably have
 7 been known by other industry participants.
 8 Q. Are you done?
 9 A. Yeah.
 10 Q. So is what you're saying that
 11 if somebody can read the same materials that
 12 you read, that you think they could come to
 13 the same conclusions without any additional
 14 economic expertise that you may have? Is
 15 that correct?
 16 MR. SOBOL: Objection.
 17 THE WITNESS: No, that's not
 18 what I said.
 19 QUESTIONS BY MR. LONERGAN:
 20 Q. What's wrong about what I said?
 21 MR. SOBOL: Objection.
 22 He didn't say it was wrong.
 23 THE WITNESS: Well, I mean, I
 24 would ask somewhat different questions
 25 when I tried to answer them. I'm not

1 sure what you're asking me to say,
 2 actually.
 3 QUESTIONS BY MR. LONERGAN:
 4 Q. Let's back up.
 5 The question I want an answer
 6 to is what expertise did you apply in
 7 reaching the opinions in paragraphs 90 and 91
 8 of your nuisance report?
 9 A. Okay. And I believe I answered
 10 that I relied on the expertise of the three
 11 named medical experts here.
 12 Q. Meaning you read their reports,
 13 right?
 14 A. Well, I read their reports and
 15 understood what their conclusions would be.
 16 Q. Okay.
 17 A. And then also made reference to
 18 two things: the studies discussed earlier in
 19 my report, and these prominent legal
 20 decisions that would have been known to
 21 members of the industry.
 22 Q. They're all materials you
 23 reviewed, right?
 24 A. Yes.
 25 Q. At what point did the

1 manufacturer defendants become aware that
 2 their marketing for opioids was misleading?
 3 MR. SOBOL: Objection. Hold on
 4 one second.
 5 It's been brought to my
 6 attention that there's apparently some
 7 limitation about follow-up questions,
 8 that they need to be specific to a
 9 manufacturer.
 10 Do I have that wrong?
 11 MR. HALLER: That's wrong.
 12 MR. LONERGAN: Why don't we go
 13 off the record. I don't want to waste
 14 time with this.
 15 VIDEOGRAPHER: The time is
 16 3:29 p.m., and we're off the record.
 17 (Off the record at 3:29 p.m.)
 18 VIDEOGRAPHER: The time is
 19 3:33, and we're on the record.
 20 QUESTIONS BY MR. LONERGAN:
 21 Q. Sir, at what point did the
 22 manufacturer defendants become aware that
 23 their marketing was misleading?
 24 MR. SOBOL: Objection. Scope.
 25 THE WITNESS: I'm not sure.

1 QUESTIONS BY MR. LONERGAN:
 2 Q. Is it the same date for each
 3 defendant?
 4 MR. SOBOL: Objection. Scope.
 5 THE WITNESS: I'm not sure.
 6 QUESTIONS BY MR. LONERGAN:
 7 Q. Is it your opinion that each
 8 marketing manufacturer -- each manufacturer
 9 defendant was aware of what the other
 10 defendants were aware of?
 11 MR. SOBOL: Objection. Scope.
 12 THE WITNESS: I'm not sure.
 13 QUESTIONS BY MR. LONERGAN:
 14 Q. At what point did my client,
 15 Endo, become aware that its marketing was
 16 misleading?
 17 MR. SOBOL: Objection. Scope.
 18 THE WITNESS: I'm not sure.
 19 QUESTIONS BY MR. LONERGAN:
 20 Q. When did you become aware of
 21 the fact that the manufacturer defendants'
 22 marketing for prescription opioids was
 23 misleading?
 24 MR. SOBOL: Objection. Scope.
 25 THE WITNESS: I would say when

1 I -- it was within the time period of
 2 this report, of my work on this
 3 report.
 4 QUESTIONS BY MR. LONERGAN:
 5 Q. You mean since you started
 6 working on this report in May of 2018?
 7 A. Yes.
 8 Q. You were the editor of the
 9 Journal of Health Economics from 2001 to
 10 2011, right?
 11 A. That's correct.
 12 Q. And during the period -- during
 13 that period of time, is it correct that the
 14 Journal of Health Economics published a
 15 number of articles concerning prescription
 16 opioids?
 17 A. Probably correct, yes.
 18 Q. And as the editor of that
 19 journal, did you familiarize yourself at that
 20 time with those publications?
 21 A. No, not necessarily. There
 22 were numerous editors during that time
 23 period, at least three, and the way the
 24 editorial process worked was there was a kind
 25 of delegation of different articles to

1 different editors.
 2 And the assigned editor would
 3 have been, you know, paying careful attention
 4 to the paper at issue, but the editors who
 5 were editors that were not assigned would not
 6 necessarily have paid close attention.
 7 Q. From 2001 to 2011, were you
 8 ever an editor assigned to an article
 9 concerning prescription opioids?
 10 A. You know, I don't remember.
 11 Q. You're no longer affiliated
 12 with the Journal of Health Economics?
 13 A. I may be an associate editor.
 14 I'm a subscriber.
 15 Q. You consider it to be a
 16 reputable journal?
 17 A. I do, yes.
 18 Q. Trustworthy?
 19 A. Yes.
 20 Q. And so the information that it
 21 publishes you would expect to be accurate,
 22 correct?
 23 A. Well, there's a process by
 24 which authors submit; it's reviewed by
 25 reviewers; editors help make a determination.

1 So the editorial staff does its best to make
 2 sure that the papers are accurate and
 3 reliable, which is not to say that there
 4 aren't sometimes things that are incorrect in
 5 the papers.
 6 Q. For the most part, your
 7 expectation is that articles published in the
 8 Journal of Health Economics are accurate,
 9 correct?
 10 MR. SOBOL: Objection.
 11 THE WITNESS: Well, subject to
 12 my previous answer that -- I'm not
 13 sure what "for the most part is," but
 14 the editorial staff does its best to
 15 make sure things are accurate.
 16 QUESTIONS BY MR. LONERGAN:
 17 Q. Well, "for the most part" was
 18 really me responding to you, and you're
 19 waffling a little.
 20 I guess what percentage of
 21 articles published by the Journal of Health
 22 Economics do you think are accurate?
 23 MR. SOBOL: Objection to the
 24 statement.
 25 But you can answer the

1 question.
 2 THE WITNESS: It's an odd
 3 question. I know, I'll answer it
 4 anyway.
 5 It's not so much that articles
 6 are accurate or inaccurate, but
 7 sometimes statements within articles
 8 are accurate or inaccurate.
 9 I'm sure all articles have some
 10 accurate stuff and, you know, some
 11 articles have some inaccurate stuff.
 12 It's really impossible for me to put a
 13 percentage on.
 14 QUESTIONS BY MR. LONERGAN:
 15 Q. Do you agree that there's been
 16 a significant number of articles concerning
 17 opioid addiction that have been published in
 18 any journal dating back to the 1960s?
 19 A. In any journal?
 20 Q. Yeah.
 21 A. I'm sure there have been
 22 research papers on it. I'm not sure what you
 23 mean by "significant" in this context, but...
 24 Q. Well, do you agree that there
 25 have been articles published dating back to

1 the 1960s concerning the risks of addiction
 2 associated with prescription opioids?
 3 MR. SOBOL: Objection.
 4 THE WITNESS: There may well
 5 be. You know, I couldn't name -- name
 6 them for you.
 7 QUESTIONS BY MR. LONERGAN:
 8 Q. It's not something you
 9 familiarized yourself with for purposes of
 10 your work on this case, correct?
 11 A. No, this is -- that's something
 12 I relied on medical experts for.
 13 Q. When did the defendants become
 14 aware of the fact that the shipments was
 15 having a negative impact on public health and
 16 safety?
 17 A. I'm not sure.
 18 Q. Is it the same for each
 19 defendant?
 20 A. In the sense that, yes -- yes,
 21 I would not be sure for each defendant when
 22 they became aware.
 23 Q. So you don't know when my
 24 client, Endo, became aware that its shipments
 25 of prescription opioids was having a, in your

1 term, negative impact on the public health
 2 and safety, correct?
 3 MR. SOBOL: Objection.
 4 THE WITNESS: I'm not aware
 5 when Endo would have become aware of
 6 that.
 7 QUESTIONS BY MR. LONERGAN:
 8 Q. In reaching the opinions set
 9 forth in paragraphs 90 and 91 of your
 10 nuisance report, did you make any assessment
 11 of what other non-defendant participants in
 12 the prescription drug market knew concerning
 13 misleading marketing of prescription opioids?
 14 A. No.
 15 Q. Did you make an assessment of
 16 what other non-defendant participants in the
 17 opioid prescription drug market knew
 18 concerning the negative impacts on public
 19 health and safety?
 20 A. It was the same. I didn't
 21 investigate what non-defendants would have
 22 known or not known.
 23 Q. You didn't make an assessment
 24 of what the FDA knew about those things and
 25 when?

1 MR. SOBOL: Objection. Scope.
 2 THE WITNESS: I'm not privy to
 3 what the FDA knew and when.
 4 QUESTIONS BY MR. LONERGAN:
 5 Q. You didn't make an assessment
 6 of what PBMs knew about those things and
 7 when?
 8 A. It would be the same.
 9 Q. You didn't make an assessment
 10 of what prescription opioid patients knew
 11 about those things and when?
 12 MR. SOBOL: Objection.
 13 QUESTIONS BY MR. LONERGAN:
 14 Q. Correct?
 15 A. These are things I didn't
 16 study.
 17 Q. You didn't make an assessment
 18 of when prescribing physicians became aware
 19 of the risks associated with prescription
 20 opioids and when, correct?
 21 MR. SOBOL: Objection.
 22 THE WITNESS: Well, that's also
 23 something I didn't study.
 24 QUESTIONS BY MR. LONERGAN:
 25 Q. Did you study when Summit

1 County became aware of misleading marketing
 2 concerning prescription opioids?
 3 MR. SOBOL: Objection. Scope.
 4 THE WITNESS: No, I didn't
 5 study that.
 6 QUESTIONS BY MR. LONERGAN:
 7 Q. Do you have an opinion on when
 8 that was?
 9 MR. SOBOL: Objection. Scope.
 10 THE WITNESS: I didn't study
 11 it.
 12 QUESTIONS BY MR. LONERGAN:
 13 Q. Did you study when Cuyahoga
 14 County became aware of prescription opioid
 15 misleading marketing?
 16 MR. SOBOL: Objection. Scope.
 17 THE WITNESS: I didn't study
 18 that.
 19 QUESTIONS BY MR. LONERGAN:
 20 Q. Do you have an opinion on when
 21 Cuyahoga County became aware of the
 22 misleading marketing?
 23 MR. SOBOL: Objection. Scope.
 24 THE WITNESS: I didn't study
 25 that.

1 QUESTIONS BY MR. LONERGAN:
 2 Q. Did you study when Summit or
 3 Cuyahoga County became aware of the negative
 4 impacts that prescription opioids were having
 5 on the public health and safety?
 6 MR. SOBOL: Objection. Scope.
 7 THE WITNESS: I also did not
 8 study that.
 9 QUESTIONS BY MR. LONERGAN:
 10 Q. Is it correct that you do not
 11 know when Summit or Cuyahoga County became
 12 aware of the negative impacts on public
 13 health and safety?
 14 MR. SOBOL: Objection. Scope.
 15 THE WITNESS: I didn't study
 16 that.
 17 QUESTIONS BY MR. LONERGAN:
 18 Q. Do you have any reason to
 19 disagree with the follow statements: Medical
 20 professionals have known for a long time that
 21 opioids are addictive?
 22 MR. SOBOL: Objection. Scope.
 23 THE WITNESS: I -- no, I have
 24 no reason to agree or disagree.
 25

1 QUESTIONS BY MR. LONERGAN:
 2 Q. Sir, yesterday you were asked a
 3 couple of questions about -- I'm sorry, last
 4 week you were asked --
 5 A. That's what I thought you
 6 meant.
 7 Q. I don't know where you were
 8 yesterday.
 9 MR. SOBOL: He said last month.
 10 MR. LONERGAN: Strike
 11 everything I just said, and him.
 12 MR. SOBOL: Certainly mine.
 13 QUESTIONS BY MR. LONERGAN:
 14 Q. Last week you were asked a few
 15 questions about prior consulting work that
 16 you've done for manufacturers, I think,
 17 manufacturers and maybe wholesalers.
 18 I've only had a chance to
 19 review the rough transcript of that
 20 deposition, and it's a little fuzzy. No
 21 offense.
 22 A. It was somebody else. She
 23 wasn't here.
 24 Q. So you can object as asked and
 25 answered, but I'm going to circle back.

1 Have you ever consulted for a
2 pharmaceutical manufacturer?
3 A. Yes.
4 Q. What manufacturer?
5 A. There were a couple of one-day
6 consultancies that I engaged in some time
7 ago. One of them I remember was at Johns
8 Hopkins. It had to do with schizophrenia
9 drugs, but I don't remember the manufacturer
10 involved for that.
11 The other was I think in
12 Chicago, and it was convened by someone
13 interested in using claims-like data for
14 marketing purposes to assess potential sales
15 of a drug by -- I don't remember the drug and
16 I don't remember the manufacturer. It was
17 about the methodology that one could use with
18 respect to that.
19 Q. And do you recall how you
20 advised that nameless manufacturer about how
21 claims data could be used to conduct analyses
22 concerning sales?
23 A. I don't remember.
24 Q. And do you recall what you were
25 brought in to consult on concerning the

1 schizophrenia drug?
2 A. Sorry, I don't remember.
3 Q. What about pharmacies? Have
4 you ever consulted for a pharmacy?
5 A. No, I have not.
6 Q. Have you ever consulted for a
7 wholesaler?
8 A. Wholesalers may have been in a
9 class in something I was involved in, but
10 never directly with a wholesaler.
11 Q. You mean they may have been in
12 a class of plaintiffs --
13 A. Yes.
14 Q. -- in a litigation you were
15 consulting on?
16 A. Yes.
17 Q. Outside of the litigation
18 context, have you ever consulted for a
19 wholesaler?
20 A. No, I haven't.
21 Q. Have you ever consulted for an
22 insurer?
23 A. Yes.
24 Q. What insurer?
25 A. Well, many. Many. You know,

1 my main line of work -- or one of my main
2 lines of work is health insurance, health
3 plan payment, health insurance payment
4 design. So I think you wouldn't want to go
5 through my CV and hear all these.
6 MR. SOBOL: I would.
7 QUESTIONS BY MR. LONERGAN:
8 Q. In general terms, when you're
9 advising an insurer concerning their health
10 insurance payment design, what types of
11 things are you advising them on?
12 A. It would be within the realm of
13 the parameters that they set in their
14 coverage. You know, something very simple
15 and straightforward would be the degree of
16 coverage for mental health and substance
17 abuse treatment. I might advise them on what
18 the cost implications would be of doing so.
19 Q. Do you ever provide them with
20 advice concerning the clinical implications?
21 A. Well, in the sense that
22 coverage for something like mental health
23 care has implications not just for cost but
24 also for the health and mental health of the
25 enrollees. And this is something that I know

1 about, something that I study, and I get
2 asked about that and I give my opinion on
3 that.
4 Q. Have you ever advised an
5 insurer concerning their coverage of
6 prescription opioids?
7 A. No, I don't think I have.
8 Q. Have you ever consulted for a
9 pharmacy benefits manager?
10 A. No, I never have.
11 Q. You're familiar with what a
12 pharmacy benefits manager is?
13 A. Yes.
14 Q. What is a pharmacy benefits
15 manager?
16 A. It would be a specialized firm
17 that takes responsibility for managing a
18 pharmacy benefit.
19 So what benefit means in this
20 context as part of a health insurance
21 benefit, that there might be a, you know,
22 single large insurer that has responsibility
23 for the overall picture but then writes
24 contracts with specialized firms, of which a
25 PBM, or a pharmacy benefit manager, is one,

1 but there are other types of these
2 specialized firms, and either on a cost or a
3 risk basis or some kind of combination of a
4 cost and a risk basis, makes a contract with
5 a PBM.

6 And then the PBM has the
7 responsibility for helping the client select
8 the drugs on the -- to be offered in the
9 formulary, would have responsibility to share
10 with a client of the tiering and the cost
11 responsibility of the enrollees, and would be
12 responsible for doing negotiation with
13 manufacturers around procurement of the drugs
14 for the client, as well as conducting some
15 utilization management activities that might
16 influence actual drug utilization.

17 Q. And a PBM's customers, are
18 those insurers, either insurance companies or
19 self-insured entities?

20 A. That would be generally
21 accurate, yes.

22 Q. Okay. And what is a
23 self-insured employer?

24 A. Self-insured refers to the --
25 the practice of an employer who in simple

1 terms pays claims directly. Now that's kind
2 of a simplification.

3 They may contract with a
4 third-party administrator to actually receive
5 the bills, maybe help negotiate the prices
6 for the services, maybe even decide the
7 network of different providers that would be
8 available to a firm's employees.

9 So the TPA would be responsible
10 for some part of the -- you know, in a
11 broader sense the design of the benefit.

12 But then the cost risk
13 associated with that, when you say
14 self-insurance, that falls on the employer.

15 One more quick sentence about
16 this. It's not always a black and white
17 world in which all the risk is with the
18 insurer, all the risk is with the employer.
19 It's often a shared risk situation.

20 Q. And a self-insured employer
21 and/or an insurance company, is it correct
22 that they rely on a PBM to administer the
23 pharmacy benefits for their covered lives?

24 A. Well, they'll partially rely on
25 a PBM, yes. It wouldn't be entirely.

1 Q. Would that be the norm?

2 MR. SOBOL: Objection.

3 THE WITNESS: Well, if you --
4 you may not even choose to use a PBM,
5 for example. You may self-administer
6 your benefit, which a number of
7 insurers do.

8 So PBMs are, number one,
9 optional. And then the nature of the
10 PBM contract and what your -- what you
11 decide about as an employer or an
12 insurer can vary by PBM and it can
13 vary by contract within the PBM. So
14 it's hard to generalize.

15 QUESTIONS BY MR. LONERGAN:

16 Q. Do you have a sense of
17 approximately how many people in the United
18 States today receive their pharmacy benefits
19 through a PBM?

20 A. A very large number.

21 Q. Do you have a sense of what
22 percentage of the country it is?

23 A. Percentage of the country? Oh,
24 I don't know. Of the number of people in the
25 country, maybe 70 percent or 80 percent.

1 Q. Would you consider that
2 significant?

3 MR. SOBOL: Objection.

4 THE WITNESS: That's a pretty
5 big number, yeah. That's why we pay
6 attention to these in my work.

7 QUESTIONS BY MR. LONERGAN:

8 Q. I know we had the back and
9 forth on what significant meant before. I'm
10 just wondering if that's significant.

11 A. Yeah, that meets my criteria.

12 Q. Have you had the opportunity to
13 examine Summit County and Cuyahoga
14 County's --

15 A. This has nothing to do with
16 you. Sorry. There was just something in my
17 water. We're going to put this right over
18 here.

19 MR. SOBOL: I think it's
20 swimming the backstroke.

21 THE WITNESS: Sorry.

22 MR. LONERGAN: It's quite all
23 right.

24 QUESTIONS BY MR. LONERGAN:

25 Q. Have you had a chance to review

1 how Summit County and Cuyahoga County's
 2 insurance plans work for their covered county
 3 employees?
 4 A. Yes, generally.
 5 Q. And do they both rely on the
 6 services of a PBM?
 7 A. You know, I don't know that I
 8 examined that aspect of it.
 9 Q. What aspect of it did you
 10 examine?
 11 A. I was -- first of all, my
 12 understanding is there's more than one
 13 involved in each of the counties, more than
 14 one insurer involved, depending -- and they
 15 cover different --
 16 Q. Presently or historically?
 17 A. Certainly historically, and
 18 there could have even been some years where
 19 there was more than one active in any one
 20 year.
 21 I was more interested when I
 22 looked at this stuff in the self-insured
 23 versus risk-based contracting.
 24 Q. And what did you find?
 25 A. It's a mix.

1 Q. What do you mean by that?
 2 A. Huh?
 3 Q. What do you mean by that?
 4 A. I mean there are some of both,
 5 and even within contracts that are labeled
 6 self-insured, there's some risk, sure.
 7 Q. Did you have an opportunity to
 8 review any of the counties' contracts that
 9 they've entered into with PBMs?
 10 A. I don't recall. I don't think
 11 so.
 12 Q. Would it surprise you to learn
 13 that those contracts gave the counties the
 14 ultimate right to make determinations
 15 concerning the formulary for the covered
 16 patients?
 17 MR. SOBOL: Objection.
 18 THE WITNESS: Yeah, as I said
 19 when we were discussing this more
 20 generally, the division of labor
 21 between what a PBM decides and what an
 22 employer, in this case the county
 23 government, decides is not fixed in
 24 stone, and it varies across different
 25 contractual arrangements. So, no, it

1 wouldn't surprise me.
 2 QUESTIONS BY MR. LONERGAN:
 3 Q. Are you familiar with the term
 4 "pharmacy and therapeutics committee"?
 5 A. Yes, I am.
 6 Q. Otherwise known as a P & T
 7 committee?
 8 A. Yes.
 9 Q. What is a P & T committee?
 10 A. A P & T would be a committee
 11 that's part of either a PBM or perhaps an
 12 insurer that makes recommendations regarding
 13 the formulary coverage of alternative drug
 14 products.
 15 Q. Have you ever served on a P & T
 16 committee?
 17 A. No, I never have.
 18 Q. Do you know what types of
 19 professionals typically serve on a P & T
 20 committee?
 21 A. Generally, yes.
 22 Q. What types of professionals?
 23 A. There would be physicians, of
 24 course, of different types. There would be
 25 pharmacists.

1 Q. How about medical ethicists?
 2 A. Medical ethicists? There may
 3 well be. Some probably have, and some
 4 probably don't.
 5 Q. I think you already said this,
 6 but in your experience both PBMs and insurers
 7 typically have P & T committees; is that
 8 correct?
 9 A. That's what I said, yes.
 10 Q. And what types of information
 11 do P & T committees typically rely on when
 12 evaluating a drug or a class of drugs?
 13 A. They are -- typically evaluate
 14 evidence that they find in their research
 15 literature on -- mostly on effectiveness.
 16 Q. So they review medical
 17 literature; is that correct?
 18 A. That's correct.
 19 Q. Do they review FDA-approved
 20 product labels?
 21 A. Yes, I think they do.
 22 Q. Do they, in your experience,
 23 review proprietary data concerning their
 24 customers' use of products?
 25 MR. SOBOL: Objection.

1 THE WITNESS: You see, in my
 2 experience, I didn't mean to imply a
 3 personal experience with a P & T
 4 committee.
 5 My knowledge about this comes
 6 from my work on health plans and my
 7 knowledge about that.
 8 And then do they what? I'm
 9 sorry.
 10 QUESTIONS BY MR. LONERGAN:
 11 Q. Rely on their proprietary
 12 data --
 13 A. Proprietary data?
 14 Q. -- concerning their customers'
 15 use of pharmaceuticals.
 16 MR. SOBOL: Objection.
 17 THE WITNESS: I'm not sure.
 18 QUESTIONS BY MR. LONERGAN:
 19 Q. Okay. How about clinical
 20 guidelines? Do P & T committees rely on
 21 clinical guidelines in making assessments of
 22 pharmaceuticals or classes of
 23 pharmaceuticals?
 24 A. Clinical guidelines, published
 25 clinical guidelines, would be part of the

1 research literature.
 2 Q. What is a formulary?
 3 A. A formulary is a listing of
 4 pharmaceutical products that are eligible for
 5 some coverage in a particular health
 6 insurance plan.
 7 It typically would have, say,
 8 three tiers, in which tier 1 is typically
 9 generic tier, and that's where the copayment
 10 obligations of the enrollees are the least.
 11 You know, just, for example, it might be \$10
 12 would be the co-pay on tier 1.
 13 Tier 2 would be typically
 14 the -- what would be called preferred brand
 15 drugs for which there would be some coverage,
 16 but the coverage would be not -- would
 17 require more than a \$10 co-pay. Maybe, say,
 18 a \$25 co-pay.
 19 And then a third tier would be
 20 typically referred to as nonpreferred brand
 21 drugs. These would have some coverage but
 22 even higher rates of co-pay.
 23 And there may be some products
 24 that aren't even on the formulary. So it's
 25 not -- you know, all drugs aren't classified

1 in all tiers, and formularies may well have
 2 more than one -- many have more than three
 3 tiers, some of them have one tier. So
 4 there's a range of arrangements.
 5 Q. And in your work consulting for
 6 health insurance companies, have you worked
 7 with them to devise strategies concerning
 8 formularies?
 9 A. I'm just thinking. No, I don't
 10 think I have.
 11 Q. Okay. In your experience, do
 12 PBMs and insurers typically employ
 13 formularies for the customers they're
 14 serving?
 15 A. Yes.
 16 Q. Have you had the opportunity to
 17 review or examine the role that formularies
 18 may have played in connection with the use of
 19 prescription opioids?
 20 MR. SOBOL: Objection.
 21 THE WITNESS: Well, not beyond
 22 my general understanding of how
 23 formularies work.
 24 QUESTIONS BY MR. LONERGAN:
 25 Q. Okay. In your experience, are

1 drug formularies an effective means of
 2 influencing patient behavior concerning
 3 selection of prescription pharmaceuticals?
 4 MR. SOBOL: Objection. Scope.
 5 THE WITNESS: It's not
 6 something I studied here.
 7 QUESTIONS BY MR. LONERGAN:
 8 Q. So you don't know?
 9 A. Well, it's not something I
 10 studied.
 11 MR. SOBOL: Objection. Scope.
 12 QUESTIONS BY MR. LONERGAN:
 13 Q. No, I understand, but -- and
 14 I'm not asking if you studied it here. I'm
 15 asking you, in your experience and given that
 16 you're a health care economist, are drug
 17 formularies an effective means of influencing
 18 patient behavior with respect to the
 19 selection of prescription pharmaceuticals?
 20 MR. SOBOL: Objection. Scope.
 21 THE WITNESS: Well, it's part
 22 of the intention of formularies to
 23 influence not just patients but to
 24 influence doctors in what they
 25 recommend. And, yes, formularies can

1 affect selection of drugs.

2 QUESTIONS BY MR. LONERGAN:

3 Q. And given that you haven't

4 examined the role of formularies with respect

5 to prescription opioids, you have no basis

6 upon which to opine that that was not the

7 case with respect to prescription opioids,

8 correct?

9 MR. SOBOL: Objection. Scope.

10 THE WITNESS: There's a couple

11 of negatives in there. I'm sorry. If

12 you don't mind, you can ask it again.

13 I'll get it the second time.

14 MR. LONERGAN: I'll do my best.

15 QUESTIONS BY MR. LONERGAN:

16 Q. Given that you haven't examined

17 the role of formularies with respect to

18 prescription opioids, you have no basis upon

19 which to opine that formularies were not

20 effective in influencing the behavior of

21 patients with respect to prescription

22 opioids, correct?

23 MR. SOBOL: Objection. Scope.

24 THE WITNESS: That's something

25 I didn't study.

1 QUESTIONS BY MR. LONERGAN:

2 Q. So --

3 A. However, the negative or

4 positives work out there.

5 Q. So you have no basis upon which

6 to have an opinion one way or the other on

7 the influence of formularies on the use of

8 prescription opioids, right?

9 MR. SOBOL: Objection. Scope.

10 THE WITNESS: I didn't study

11 that.

12 QUESTIONS BY MR. LONERGAN:

13 Q. Okay. Outside of formularies,

14 PBMs and insurers also employ utilization

15 management tools to influence patient

16 behavior, correct?

17 A. That's correct.

18 MR. SOBOL: Objection. Scope.

19 THE WITNESS: I think I

20 mentioned that earlier.

21 QUESTIONS BY MR. LONERGAN:

22 Q. I think you did.

23 I just want to be a little more

24 specific about what a utilization management

25 tool is.

1 Is a quantity limit, in your

2 mind, a utilization management tool?

3 A. That would be an example of a

4 utilization management tool.

5 Q. And what is a quantity limit?

6 A. It would be a -- you know, kind

7 of rule that a PBM might administer to say

8 that there's a maximum number of, say, pills

9 that would be covered under the formulary.

10 Q. And in your experience, are

11 quantity limits typically effective at

12 influencing patient behavior with respect to

13 prescription drugs generally?

14 A. I've never explicitly studied

15 quantity limits.

16 Q. Okay. How about step therapy?

17 Is that a utilization management tool?

18 A. Yes, it is.

19 Q. What is step therapy?

20 A. Step therapy refers to another

21 kind of protocol that a PBM would implement

22 that says step 1 might be where a patient

23 with a certain health condition is required

24 to start in terms of treatment.

25 And then to get step 2 to go in

1 an alternative, there would be some

2 conditions under which a patient could move

3 from step 1 to step 2.

4 Q. Have you studied the

5 effectiveness of step therapy protocols in

6 influencing patient behavior?

7 A. No, I haven't.

8 Q. What about prior authorization,

9 is that a utilization management tool?

10 A. Yes, it is.

11 Q. And what is prior

12 authorization?

13 A. Prior authorization refers to

14 another protocol that a PBM or insurer might

15 use to require that before a service is

16 delivered to a patient, which could be some

17 kind of physician procedure or a

18 hospitalization or, in this case,

19 pharmaceuticals, a call needs to be made to

20 someone from the insurer, from the PBM, to

21 authorize the coverage for that service or

22 product.

23 Q. Earlier today I think you

24 testified that PBMs won't know why a patient

25 is receiving a prescription opioid because

1 they don't receive the diagnosis; is that
 2 correct?
 3 A. That's -- generally, that's
 4 correct.
 5 Q. If prior authorization were
 6 required for the distribution or dispensation
 7 of a prescription opioid, you'd agree in that
 8 instance a PBM or an insurer would be
 9 well-aware of the diagnosis code, correct?
 10 A. Well, I think that's, you know,
 11 a different mechanism than getting a claim.
 12 And if you ask me in general terms what
 13 happens during prior authorization, someone
 14 familiar with the medical condition of the
 15 patient would make a call and explain the
 16 reasons why this product were needed, and it
 17 would include a description of the health --
 18 you know, what is the basis of the health
 19 needs of the patient.
 20 Q. Do you know the extent to which
 21 any of these utilization management tools,
 22 quantity limits, step therapy or prior
 23 authorization, were employed historically in
 24 connection with the prescription opioids?
 25 MR. SOBOL: Objection. Scope.

1 Go ahead.
 2 THE WITNESS: I didn't study
 3 that.
 4 QUESTIONS BY MR. LONERGAN:
 5 Q. So you don't know?
 6 MR. SOBOL: Objection. Scope.
 7 THE WITNESS: I didn't study
 8 it.
 9 QUESTIONS BY MR. LONERGAN:
 10 Q. Do you have any reason to
 11 believe that these utilization management
 12 tools were not available to be employed by
 13 PBMs or insurers with respect to prescription
 14 opioids?
 15 MR. SOBOL: Objection. Scope.
 16 THE WITNESS: I don't really
 17 have any reason to believe one way or
 18 the other.
 19 QUESTIONS BY MR. LONERGAN:
 20 Q. Are you familiar with the NCPDP
 21 protocol? NCPDP standing for National
 22 Council of Prescription Drug Programs.
 23 A. I'm not familiar with that.
 24 Q. Okay. Are you familiar with
 25 how pharmacies communicate with PBMs and

1 insurers in connection with the distribution
 2 of prescription drugs?
 3 MR. SOBOL: Objection. Scope.
 4 THE WITNESS: Well, in some
 5 ways I'm generally familiar.
 6 QUESTIONS BY MR. LONERGAN:
 7 Q. But you're not an expert in
 8 terms of what information gets transferred
 9 back and forth; is that correct? Or what
 10 protocol is used for that?
 11 MR. SOBOL: Objection. Scope.
 12 THE WITNESS: Well, I think it
 13 depends on what you ask specifically
 14 whether I'm likely to know it or not.
 15 QUESTIONS BY MR. LONERGAN:
 16 Q. Okay. So in a hypothetical,
 17 let's say your lawyer goes to the pharmacy to
 18 pick up a prescription drug, what information
 19 does that pharmacy communicate to his insurer
 20 and the PBM, and on what protocol is it used
 21 to do that?
 22 MR. SOBOL: Objection.
 23 Compound. Scope.
 24 THE WITNESS: I will probably
 25 just get this partially right, which

1 is --
 2 QUESTIONS BY MR. LONERGAN:
 3 Q. Okay. He will tell you not to
 4 guess, but...
 5 A. The pharmacy would communicate
 6 electronically with the PBM or the health
 7 insurer about the -- who is being --
 8 requested the prescription on behalf of whom,
 9 that is, what patient, possibly the doctor,
 10 and what the prescription -- what the
 11 prescription is.
 12 Q. Is any other information
 13 transferred at that time?
 14 A. There may be.
 15 Q. You don't know?
 16 A. That's -- I told you what I
 17 know.
 18 Q. Okay. And you don't know what
 19 protocol is used for that communication,
 20 correct?
 21 A. I'm sorry, by "protocol" you
 22 mean electronic something or the other?
 23 Q. You've already testified you
 24 don't know what the NCPDP protocol is, so I
 25 probably don't need to ask that question.

1 A. All right.

2 Q. At paragraph 23 of your public

3 nuisance report, you refer to scientifically

4 acceptable clinical criteria with respect to

5 prescription opioids.

6 Do you see that?

7 A. Yes.

8 Q. What are the scientifically

9 acceptable clinical criteria you're referring

10 to in that paragraph?

11 A. This is a little more general.

12 It says "like prescription opioids," but the

13 scientifically acceptable clinical criteria

14 would be -- you know, medical justification

15 would be another way to -- medically justify

16 would be another way to say it.

17 Q. Fair.

18 But my question is a little

19 more specific.

20 Is there a specific criteria

21 you believe is the scientifically acceptable

22 criteria for the use of prescription opioids?

23 A. Well, this is what doctors know

24 about --

25 Q. Uh-huh.

1 A. -- what are the medically

2 appropriate treatments based on science, and

3 the science comes from research studies.

4 Q. What have you done to

5 understand the scientifically acceptable

6 clinical criteria for the use of prescription

7 opioids?

8 A. I've -- for this I rely on the

9 medical expert reports that I mentioned

10 earlier: Schumacher, Parran, Egilman.

11 Q. Anything else?

12 A. I've read things, researched

13 literature.

14 Q. Is all of the research

15 literature that you've read in connection

16 with this cited or noted in your expert --

17 one of your -- either of your expert reports?

18 A. The ones I relied on, yes.

19 Q. Okay. Anything else?

20 MR. SOBOL: Objection.

21 THE WITNESS: Not that I can

22 think of.

23 QUESTIONS BY MR. LONERGAN:

24 Q. You also in your public

25 nuisance report conduct a cost/benefit

1 analysis concerning the quality of life

2 attributes of prescription opioids.

3 Correct?

4 A. Well, I wouldn't quite call it

5 that, but I do do an analysis of quality of

6 life.

7 Q. What would you call it?

8 A. I would call it an economic

9 assessment of the pluses and minuses of the

10 effect of opioid shipments on quality of

11 life.

12 Q. And in doing that, you had to

13 identify the instances where you believed

14 that the use of prescription opioids was

15 scientifically acceptable, correct?

16 A. That's right.

17 Q. Do you agree that chronic pain

18 is a serious mental, medical condition?

19 A. I'm sure it is.

20 Q. Do you agree that chronic pain

21 affects millions of people in the United

22 States?

23 MR. SOBOL: Objection. Scope.

24 THE WITNESS: I see that in

25 things I read.

1 QUESTIONS BY MR. LONERGAN:

2 Q. Do you agree that chronic pain

3 affects residents of Summit County, Ohio?

4 MR. SOBOL: Objection. Scope.

5 THE WITNESS: Well, I didn't

6 study that, but I'm sure that's true.

7 QUESTIONS BY MR. LONERGAN:

8 Q. Do you agree that chronic pain

9 affects residents of Cuyahoga County, Ohio?

10 MR. SOBOL: Objection. Scope.

11 THE WITNESS: That's, again,

12 something I didn't study, but I'd be

13 surprised if it weren't true.

14 QUESTIONS BY MR. LONERGAN:

15 Q. Do you agree that there are

16 risks associated with untreated chronic pain?

17 MR. SOBOL: Objection. Scope.

18 THE WITNESS: I really don't

19 know.

20 QUESTIONS BY MR. LONERGAN:

21 Q. So you don't know?

22 A. I don't know.

23 Q. It's not something you took

24 into account doing your cost/benefit

25 analysis?

1 A. I didn't think I needed to.

2 Q. Do you agree that every --

3 A. Excuse me. By the way, I

4 wouldn't call it a cost/benefit analysis. I

5 know what you're referring to.

6 Q. What's the term? I'll use your

7 term. I just don't remember what you said.

8 A. It's an economic assessment of

9 the effect of shipments on quality of life.

10 You can call it --

11 Q. Can we agree to call it a

12 cost/benefit analysis --

13 MR. SOBOL: Objection.

14 QUESTIONS BY MR. LONERGAN:

15 Q. -- for short?

16 MR. SOBOL: Objection.

17 THE WITNESS: It kind of

18 bothers me to use the wrong words in

19 that, but you can shorten it to "your

20 analysis of quality of life."

21 MR. SOBOL: Is that -- "your

22 analysis," is that one word or two?

23 THE WITNESS: It's your

24 analysis.

25 MR. SOBOL: It's your analysis.

1 QUESTIONS BY MR. LONERGAN:

2 Q. Do you agree --

3 MR. LONERGAN: I'm running

4 against the clock here. I would love

5 to engage with you guys.

6 QUESTIONS BY MR. LONERGAN:

7 Q. Do you agree that no single

8 treatment option will be appropriate for

9 every chronic pain patient?

10 A. I really don't know. It's

11 not --

12 Q. It's not something you --

13 A. -- not my --

14 Q. -- considered in your economic

15 analysis --

16 A. It's not my --

17 Q. -- correct?

18 A. Yeah, it's not my expertise.

19 Q. Do you agree that it is

20 important for physicians to have a variety of

21 treatment options to choose from when

22 treating a medical condition?

23 MR. SOBOL: Objection. Scope.

24 THE WITNESS: I really --

25 generally, options are good. I really

1 don't have a specific opinion about

2 particular medical options.

3 QUESTIONS BY MR. LONERGAN:

4 Q. Do you agree that all

5 treatments for chronic pain have risks?

6 MR. SOBOL: Objection. Scope.

7 THE WITNESS: I don't know.

8 QUESTIONS BY MR. LONERGAN:

9 Q. It's not something you

10 considered as a part of conducting your

11 economic analysis, correct?

12 MR. SOBOL: Objection. Scope.

13 THE WITNESS: Yeah, I didn't

14 study that.

15 QUESTIONS BY MR. LONERGAN:

16 Q. Do you agree that it's the role

17 of the prescribing physician to weigh the

18 risks and benefits of any pain medication

19 when treating an individual patient?

20 MR. SOBOL: Objection. Scope.

21 THE WITNESS: Well, ideally an

22 agent, which is what the economic

23 literature refers to physicians as --

24 an agent is somebody acting on behalf

25 of the patient -- should help the

1 patient in making the right decision

2 for them.

3 QUESTIONS BY MR. LONERGAN:

4 Q. And you believe --

5 A. Considering --

6 Q. You believe that didn't happen

7 here, correct?

8 A. Considering the pluses and

9 minuses.

10 Could you be more specific

11 about what you're asking?

12 Q. Well, strike that.

13 In paragraph 22 of your public

14 nuisance report, you opined that physicians

15 were misled by defendants' marketing,

16 correct?

17 A. That's what I say in the last

18 sentence.

19 Q. And that's your opinion?

20 A. Well, it's my opinion. It's,

21 again, based on the reports of the medical

22 experts.

23 Q. You're not an expert on the FDA

24 regulations concerning prescription

25 pharmaceutical marketing, are you?

1 A. I know something about them.
 2 It depends on what you ask.
 3 Q. Do you hold yourself out to be
 4 an expert on the FDA regulations concerning
 5 prescription pharmaceutical marketing?
 6 A. Well, it again depends. In my
 7 work, I need to know some things. So it's
 8 not zero. It's not 100 percent. It really
 9 depends on the particular area you're asking
 10 about.
 11 Q. Well, the particular area I'm
 12 asking about are the FDA regulations
 13 concerning prescription pharmaceutical
 14 marketing.
 15 A. Yes.
 16 Q. Do you consider yourself to be
 17 a 100 percent expert on those regulations?
 18 MR. SOBOL: Objection. Asked
 19 and answered.
 20 THE WITNESS: No, I don't
 21 consider myself to be a 100 percent,
 22 but I'm also not a zero percent.
 23 QUESTIONS BY MR. LONERGAN:
 24 Q. Do you have an opinion in this
 25 litigation as to whether defendants'

1 prescription opioid marketing violated the
 2 FDA regulations concerning prescription
 3 pharmaceutical marketing?
 4 MR. SOBOL: Objection. Scope.
 5 THE WITNESS: That's not
 6 something that I studied.
 7 QUESTIONS BY MR. LONERGAN:
 8 Q. Are you able to point to any
 9 physician who was actually misled by the
 10 opioid manufacturers' marketing?
 11 MR. SOBOL: Objection. Scope.
 12 THE WITNESS: That's not
 13 something I studied.
 14 QUESTIONS BY MR. LONERGAN:
 15 Q. Do you agree that physicians
 16 are learned intermediaries?
 17 MR. SOBOL: Objection. Scope.
 18 THE WITNESS: Well, I agree
 19 that physicians have medical knowledge
 20 that patients generally do not know,
 21 and I agree that they're
 22 intermediaries in a number of ways
 23 between patients and the patients'
 24 needs and the health care services and
 25 products that patients require.

1 QUESTIONS BY MR. LONERGAN:
 2 Q. What do you understand the term
 3 "learned intermediary" to mean?
 4 A. Well, I explained my -- I don't
 5 have a specialized legal understanding. I
 6 only explain what the two words mean to me in
 7 this context. I don't know if that was
 8 clear.
 9 But learned is specialized
 10 medical knowledge that patients don't have,
 11 and intermediary means they assist the
 12 patients in provide -- in getting access to
 13 services that the patients needs.
 14 Q. Fine.
 15 Using your definition of
 16 learned intermediary, do you consider doctors
 17 who prescribe prescription opioids to
 18 patients to be learned intermediaries?
 19 MR. SOBOL: Objection. Scope.
 20 Form.
 21 THE WITNESS: Well, I think in
 22 general doctors are learned
 23 intermediaries, and so that covers
 24 doctors and, you know, the tasks that
 25 they have.

1 QUESTIONS BY MR. LONERGAN:
 2 Q. Sir, is it your understanding
 3 that each prescription opioid at issue in
 4 this litigation carries with it an
 5 FDA-approved label or package insert?
 6 MR. SOBOL: Objection. Scope.
 7 THE WITNESS: Yeah, I do
 8 understand that.
 9 QUESTIONS BY MR. LONERGAN:
 10 Q. And you understand that the
 11 pharmaceutical manufacturers' employees who
 12 detailed doctors provided those labels to
 13 physicians during those detail visits?
 14 MR. SOBOL: Objection. Scope.
 15 THE WITNESS: Well, I don't
 16 know what the transaction was between
 17 the detail people and the doctors.
 18 QUESTIONS BY MR. LONERGAN:
 19 Q. Do you have an opinion as to
 20 whether the FDA-approved labels for the
 21 prescription opioids at issue in this
 22 litigation were misleading?
 23 MR. SOBOL: Objection. Scope.
 24 THE WITNESS: I don't have an
 25 opinion about that. I didn't study

1 it.

2 QUESTIONS BY MR. LONERGAN:

3 Q. In your opinion, is it possible

4 for an opioid manufacturer to appropriately

5 market a prescription opioid?

6 MR. SOBOL: Objection. Scope.

7 THE WITNESS: Well, it might

8 be. I didn't study it.

9 QUESTIONS BY MR. LONERGAN:

10 Q. Well, you did -- I mean, you

11 did opine that the opioid manufacturers

12 misled physicians, correct?

13 MR. SOBOL: Objection. Scope.

14 THE WITNESS: Yeah, based on

15 other reports, yes.

16 QUESTIONS BY MR. LONERGAN:

17 Q. Right.

18 But based on your understanding

19 that the manufacturing was misleading, right?

20 MR. SOBOL: Objection. Scope.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. LONERGAN:

23 Q. And so here we are. Now I'm

24 asking: Is it possible for a prescription

25 opioid manufacturer to, in your mind,

1 appropriately market a prescription opioid?

2 MR. SOBOL: Objection. Scope.

3 Form.

4 THE WITNESS: It might be on --

5 I really didn't study it. I don't

6 know.

7 QUESTIONS BY MR. LONERGAN:

8 Q. Is it possible for an opioid

9 manufacturer to market a prescription opioid

10 in a way that expands the market for

11 prescription opioid and still be appropriate?

12 MR. SOBOL: Objection. Scope.

13 Form.

14 THE WITNESS: I don't know.

15 QUESTIONS BY MR. LONERGAN:

16 Q. As a health care economist, are

17 you familiar with the economic literature

18 concerning the factors that influence

19 physician prescribing?

20 A. Yes.

21 Q. And is one of those factors

22 manufacturer marketing?

23 A. Yes.

24 Q. Is one of those factors the

25 overall cost to the patient?

1 A. Probably sometimes. Not always

2 as much as it should be.

3 Q. Is one of those factors the

4 applicable formulary?

5 A. Sometimes, probably.

6 Q. Is one of those factors

7 applicable utilization management protocols?

8 A. Well, generally.

9 Q. Is one of those factors known

10 to be a physician's experience with a

11 particular medication?

12 A. That's also one of the factors.

13 Q. Is one of those factors known

14 to be a physician's experience with a

15 particular disease state?

16 A. That's also a factor.

17 Q. Is one of those factors known

18 to be a physician's overall years of

19 experience?

20 A. Generally a physician's

21 experience affects how they treat patients.

22 Q. Are there any other factors

23 that you're aware of that are known to affect

24 a physician's prescribing?

25 MR. SOBOL: Objection. Scope.

1 THE WITNESS: You gave a pretty

2 long list there.

3 Well, at least there's also

4 financial incentives to physicians --

5 QUESTIONS BY MR. LONERGAN:

6 Q. Anything else?

7 A. -- that would also affect it.

8 I think within the buckets you

9 gave, it would capture most of what I can

10 think of.

11 Q. Given all of the different

12 factors we've just walked through that are

13 known in the economic literature to affect a

14 physician's prescribing, would you agree that

15 marketing would affect a prescribing

16 physician differently from other prescribing

17 physicians?

18 MR. SOBOL: Objection.

19 QUESTIONS BY MR. LONERGAN:

20 Q. I can ask that question in a

21 better way.

22 A. Thank you.

23 Q. Is it fair to say that

24 detailing would be expected to affect

25 different physicians differently?

1 MR. SOBOL: Objection. Scope.
 2 THE WITNESS: It might. I'm
 3 not sure.
 4 QUESTIONS BY MR. LONERGAN:
 5 Q. It's not something you have an
 6 opinion on?
 7 A. I haven't studied it, no.
 8 MR. LONERGAN: Why don't we
 9 take a break.
 10 VIDEOGRAPHER: The time is
 11 4:19 p.m., and we're off the record.
 12 (Off the record at 4:19 p.m.)
 13 VIDEOGRAPHER: The time is
 14 4:32 p.m., and we're on the record.
 15 CROSS-EXAMINATION
 16 QUESTIONS BY MR. CARTER:
 17 Q. My name is Ed Carter. I
 18 represent Walmart, and I have some questions
 19 for you.
 20 All right?
 21 A. That's fine. Yeah, sure.
 22 Q. Who are the retail pharmacy
 23 defendants in this case?
 24 A. I can name some.
 25 Q. Which ones can you name?

1 A. I can name CVS. I can name
 2 Rite Aid. I guess Walmart would be a retail.
 3 Q. Any others?
 4 A. Those are the only ones I can
 5 name.
 6 Q. What consideration, if any, did
 7 you pay to the retail pharmacy defendants in
 8 preparation of your damages report?
 9 A. I made sure to mention the
 10 defendants included signatories to the CSA.
 11 Q. Anything else in your damages
 12 report that takes the retail pharmacy
 13 defendants into specific consideration?
 14 A. No, there's nothing else in the
 15 damages report that gives special attention
 16 to the retail pharmacies.
 17 Q. So nothing beyond their status
 18 as CSA signatories?
 19 A. That's correct, no other
 20 special attention.
 21 Q. Same question for the nuisance
 22 report: What specific attention did you pay
 23 to the retail pharmacy defendants in the
 24 course of preparing your nuisance report?
 25 A. There was no special attention

1 to the retail pharmacy defendants in the
 2 public nuisance report.
 3 Q. What role in terms of conduct
 4 do the retail pharmacy defendants play in the
 5 context of your damages report?
 6 A. They distribute shipments of
 7 opioids.
 8 Q. Do you know to whom they
 9 distribute those shipments?
 10 A. Well, to patients.
 11 Q. Do you know whether they --
 12 whether the retail pharmacy defendants ever
 13 distribute outside of their own corporate
 14 network?
 15 MR. SOBOL: Objection.
 16 THE WITNESS: I'm not sure what
 17 you mean.
 18 QUESTIONS BY MR. CARTER:
 19 Q. So do you know where Walmart --
 20 for example, when Walmart distributed
 21 opioids, do you know to whom Walmart
 22 distributed opioids?
 23 A. Well, they would have sold some
 24 from their stores. I don't know of any other
 25 outlet for their opioids.

1 Q. Do you know whether Walmart
 2 ever distributed to a non-Walmart pharmacy?
 3 A. No, I don't know that.
 4 Q. Do you know whether any CVS
 5 distribution ever went to a non-CVS Pharmacy?
 6 A. I'm not familiar with where
 7 else the CVS shipments might have gone.
 8 Q. Same question for Rite Aid?
 9 A. Same answer: I'm not sure
 10 where the Rite Aid shipments would have gone,
 11 aside from Rite Aid pharmacies.
 12 Q. Do you know whether any of the
 13 retail pharmacy defendants currently
 14 distribute opioids?
 15 MR. SOBOL: Objection. Scope.
 16 THE WITNESS: I haven't studied
 17 that.
 18 QUESTIONS BY MR. CARTER:
 19 Q. Will you identify for me all
 20 allegedly wrongful conduct on the part of the
 21 retail pharmacy defendants that factors into
 22 your damages report?
 23 MR. SOBOL: Objection. Scope.
 24 THE WITNESS: I didn't study
 25 that.

1 QUESTIONS BY MR. CARTER:

2 Q. Okay. Identify for me all

3 wrongful conduct on the part of the pharmacy

4 defendants that factors into your nuisance

5 report.

6 MR. SOBOL: Objection. Scope.

7 THE WITNESS: I didn't study

8 that.

9 QUESTIONS BY MR. CARTER:

10 Q. In your damages report, is it

11 possible that there are some defendants in

12 this case that are not responsible for any

13 damages -- any of your damages estimates?

14 MR. SOBOL: Objection. Scope.

15 Form.

16 THE WITNESS: I'm not sure how

17 to even answer that. I didn't study

18 it.

19 QUESTIONS BY MR. CARTER:

20 Q. So in the course of preparing

21 your damage reports, is it accurate to say

22 that you did not make any calculation or

23 apportionment of the damages in your estimate

24 to any particular defendant? Is that a true

25 statement?

1 A. That's generally a true

2 statement.

3 As I'm sure you know, the work

4 in my report was to identify the potentially

5 affected costs, and then I had input,

6 primarily from Professor Cutler, about the

7 share of those costs that could be attributed

8 to misconduct.

9 Now, the nature of the overall

10 enterprise is that the attribution to

11 particular defendants becomes possible at the

12 Rosenthal stage, depending on some things,

13 but it's not an input that would come into

14 play in my stage.

15 Q. So putting to one side inputs

16 from Cutler or from Rosenthal, you,

17 personally, you have not conducted an

18 independent assessment of damage estimates

19 apportioned to a particular defendant?

20 A. That's correct, my damage

21 estimates apply to shipments due to

22 misconduct where I got the inputs from other

23 experts.

24 Q. Same question for your nuisance

25 report. Do the estimates in your nuisance

1 report turn in any way on a specific

2 defendant?

3 MR. SOBOL: Objection. Form.

4 THE WITNESS: Can you --

5 QUESTIONS BY MR. CARTER:

6 Q. Sure.

7 A. -- explain what you mean by

8 "turn in any way"? I'm not sure what you're

9 asking.

10 Q. In looking at your public

11 nuisance report, can anyone pull from that a

12 specific apportionment of damages that you

13 would attribute to an individual defendant?

14 A. Well, this is a similar answer

15 to the damages report: that my estimates are

16 aggregate, and against which shares are

17 applied from the Cutler report.

18 So if those shares change

19 because of some other counterfactual, then

20 they would flow through into my public

21 nuisance.

22 Q. Okay. Do you know how many

23 defendant parties are in the case currently?

24 A. I'm not sure.

25 Q. Okay. If five defendants left

1 the case tomorrow, would any of the numbers

2 in your damages report change?

3 MR. SOBOL: Objection. Scope.

4 Form.

5 THE WITNESS: I'm not sure. It

6 depends. I would have to -- I'd have

7 to know more. I'd have to probably

8 get some guidance from legal.

9 QUESTIONS BY MR. CARTER:

10 Q. Okay. So, for example, if all

11 of the retail defendants were dismissed from

12 the case tomorrow, would you amend or need to

13 change your damages calculations in your

14 report?

15 MR. SOBOL: Objection. Scope.

16 Form.

17 THE WITNESS: I'm not sure. I

18 didn't study that.

19 QUESTIONS BY MR. CARTER:

20 Q. Okay. If five defendants left

21 the case tomorrow, would you need to make any

22 changes to your public nuisance report?

23 MR. SOBOL: Objection. Scope.

24 Form.

25 THE WITNESS: I would have

1 to -- I'm not sure. I didn't study
 2 that, and I probably need guidance
 3 from legal.
 4 QUESTIONS BY MR. CARTER:
 5 Q. In describing marketing
 6 conduct, do you agree that a defendant who
 7 never marketed or advertised opioids is not
 8 responsible for any alleged harms caused by
 9 such marketing?
 10 MR. SOBOL: Objection. Scope.
 11 THE WITNESS: I'm not really
 12 sure about that.
 13 QUESTIONS BY MR. CARTER:
 14 Q. Okay.
 15 A. I'm sorry.
 16 Q. So you think it's possible that
 17 someone who didn't engage in marketing or
 18 advertising could still be responsible from
 19 an economic perspective for any such harms
 20 caused by that marketing?
 21 MR. SOBOL: Objection. Form.
 22 Scope.
 23 THE WITNESS: I -- I'm not --
 24 I'm not sure.
 25

1 QUESTIONS BY MR. CARTER:
 2 Q. Okay. Do you have an expert
 3 opinion one way or another on that?
 4 MR. SOBOL: Objection. Scope.
 5 Form.
 6 THE WITNESS: I'm not sure.
 7 QUESTIONS BY MR. CARTER:
 8 Q. Okay. So you don't --
 9 A. I don't have an opinion one way
 10 or the other whether that's true or false.
 11 Q. Okay. You were asked some
 12 questions about pages 90 and 92 of your
 13 nuisance report. If you turn to that section
 14 with me, please, I just want to orient you.
 15 You see the paragraphs 90 and
 16 92?
 17 A. Yeah. Okay. Good.
 18 Q. The one question that didn't
 19 get a form objection.
 20 MR. SOBOL: Well, I was still
 21 confused.
 22 MR. CARTER: Fair.
 23 QUESTIONS BY MR. CARTER:
 24 Q. So you recall discussing with
 25 counsel the defendant -- the Subheading D,

1 defendants were or should have been aware of
 2 the interference?
 3 A. I do recall that, yes.
 4 Q. Okay. Do you know whether any
 5 of the retail pharmacy defendants are --
 6 well, strike that.
 7 Do you intend to include any of
 8 the retail pharmacy defendants in the
 9 statements that you offer in this section of
 10 your report?
 11 MR. SOBOL: Section D?
 12 MR. CARTER: Yes.
 13 THE WITNESS: Yeah,
 14 potentially.
 15 QUESTIONS BY MR. CARTER:
 16 Q. Okay. Do you provide any
 17 examples that specifically identify retail
 18 pharmacy defendants in this section?
 19 A. No, I don't think so.
 20 Q. Did you conduct any separate
 21 analysis of the alleged conduct of the retail
 22 pharmacy defendants in connection with
 23 forming the opinions in Subsection D of this
 24 report?
 25 A. The analysis I conducted are

1 contained in the report. There was nothing
 2 specific to the retail defendants.
 3 Q. You were asked a question about
 4 whether you knew when the counties first were
 5 aware of -- or should have been aware of the
 6 various harms referenced in this section of
 7 the report. I want to follow up on that
 8 series of questions.
 9 A. Okay.
 10 Q. You indicated that you didn't
 11 know when they were first aware. I want to
 12 ask a different question.
 13 Is there a time period by which
 14 you can opine to a reasonable degree of
 15 economic certainty that more likely than not
 16 by day X Summit County was aware that it was
 17 being harmed as a result of misleading
 18 marketing?
 19 MR. SOBOL: Objection. Scope.
 20 THE WITNESS: I don't think I
 21 could do that. I wasn't asked to
 22 study it.
 23 QUESTIONS BY MR. CARTER:
 24 Q. Okay. Same question for
 25 Cuyahoga County.

1 MR. SOBOL: Same objection.
2 Scope.
3 THE WITNESS: Same answer: I
4 wasn't asked to study it. I don't
5 think I could do that.
6 QUESTIONS BY MR. CARTER:
7 Q. Is there a date by which you're
8 willing to opine more likely than not Summit
9 County was aware that it was incurring harms
10 to the public health and welfare as a result
11 of opioid-related expenses?
12 MR. SOBOL: Objection. Scope.
13 THE WITNESS: I wasn't asked to
14 study that. I don't think I could
15 answer that question.
16 QUESTIONS BY MR. CARTER:
17 Q. Same question for Cuyahoga
18 County.
19 A. Same answer: I wasn't asked to
20 study it. I don't think I could answer that
21 question.
22 Q. Is it your opinion that when
23 Summit County was expending its budget for
24 2006, did the county have any idea that it
25 was making expenditures that were related to

1 opioids?
2 A. I would be speculating, and
3 what is the county here?
4 Q. Summit.
5 A. I know. I meant when you say
6 "Summit County," that kind of knowledge is
7 something that people have, so I would expect
8 it would depend.
9 Q. So do you know -- do you have
10 an expert opinion one way or the other as to
11 whether in 2006, when expending its budget in
12 the various divisions that you studied,
13 whether Summit County was aware that it was
14 spending even a dollar on opioid-related
15 costs?
16 MR. SOBOL: Objection. Scope.
17 Form.
18 THE WITNESS: Well, I didn't
19 study that.
20 QUESTIONS BY MR. CARTER:
21 Q. Would that --
22 A. Just -- excuse me, one more
23 comment.
24 Q. Sure.
25 A. It's -- I find it a little odd

1 to ask about the county as being aware of
2 something.
3 I assume what you mean by that
4 is something about the people who work in the
5 county. And since there are many, that would
6 have probably been a different answer for
7 different groups of people.
8 Q. In your review of the case
9 materials, did you come across individuals in
10 Summit County who were aware of making
11 opioid-related expenditures in 2006?
12 A. I don't remember talking to
13 anyone about 2006.
14 Q. What about 2007? And this is
15 focused on your review of the case materials,
16 whether you're aware of individuals in Summit
17 County reflecting awareness that they were
18 making opioid-related expenditures in 2007.
19 A. I don't remember anything,
20 sitting here.
21 Q. Okay. Do you remember anything
22 for 2008?
23 A. Same answer: I don't remember
24 anything sitting here.
25 Q. 2009?

1 A. Same answer: I don't remember
2 anything.
3 Q. Same answer the rest of the
4 years through 2018?
5 MR. SOBOL: Objection. Scope.
6 THE WITNESS: Do you mind
7 repeating the question for the block
8 of years there?
9 QUESTIONS BY MR. CARTER:
10 Q. Sure. Yes.
11 The last one I did was 2009.
12 So from 2010 to 2018, did you see anything in
13 your review of the case materials reflecting
14 an understanding on the part of individuals
15 in Summit County that they were making
16 opioid-related budget expenditures?
17 A. I'm pretty sure I did.
18 Q. Okay. And what is the first
19 year that you recall seeing something in the
20 case materials reflecting that understanding
21 from an individual in Summit County?
22 A. I don't remember.
23 Q. Okay. What about Cuyahoga
24 County?
25 And I'm asking this question at

1 the county level. Do you know whether the
 2 county, in making its budget expenditures for
 3 2006, if the county was aware that it was
 4 spending even a single dollar on
 5 opioid-related expenses?

6 MR. SOBOL: Objection. Scope.

7 THE WITNESS: I didn't study
 8 that. I'm not sure.

9 QUESTIONS BY MR. CARTER:

10 Q. Okay. Did you study the
 11 county's awareness for any period from 2007
 12 to 2018 on that same issue?

13 A. Well, I would have encountered
 14 evidence for that.

15 Q. Okay. And what do you -- what
 16 did you do when you encountered such
 17 evidence?

18 How did you factor it into your
 19 economic analysis, if at all?

20 MR. SOBOL: Objection. Form.

21 THE WITNESS: Well, I found it
 22 to be confirmatory that these are
 23 opioid-related expenditures. I don't
 24 remember when, in each of the
 25 counties, I heard -- or talked to

1 someone that they acknowledged, yes,
 2 these are opioid-related expenditures.

3 But, I don't know, just in the
 4 course of conversation, that became
 5 clear.

6 QUESTIONS BY MR. CARTER:

7 Q. To the extent you came across
 8 confirmatory evidence, what value, what
 9 weight, would you assign that in the course
 10 of your economic analysis?

11 MR. SOBOL: Objection.

12 THE WITNESS: I'm not sure how
 13 to answer that.

14 QUESTIONS BY MR. CARTER:

15 Q. So do you know what proportion
 16 of -- because we were talking about Cuyahoga
 17 County.

18 Do you know what proportion of
 19 Cuyahoga County's expenditures you found
 20 equivalent, confirmatory evidence that the
 21 individuals running those divisions were
 22 aware of opioid-related expenditures?

23 A. I'm not sure.

24 MR. SOBOL: Objection.

25

1 QUESTIONS BY MR. CARTER:

2 Q. Do you know whether it was more
 3 than 50 percent of the expenditures you
 4 studied?

5 A. It could -- it could be or
 6 maybe not -- it could be yes or could be no.
 7 I'm not sure.

8 Q. Do you know the percent of
 9 instances in Summit County where you found
 10 confirmatory evidence that the individuals in
 11 the county in the various divisions were
 12 aware that they were making opioid-related
 13 expenditures?

14 MR. SOBOL: Objection.

15 THE WITNESS: I don't remember
 16 one way or the other.

17 QUESTIONS BY MR. CARTER:

18 Q. Okay. Does the absence of any
 19 such confirmatory evidence give you any pause
 20 in the course of your economic analysis?

21 A. Not really. The work that I
 22 did in identifying opioid-related
 23 expenditures is a reliable way to get an
 24 opportunity cost, as we discussed quite a bit
 25 this morning. And that is the opportunity

1 cost with respect to what else those funds
 2 could have been used for. So it was -- I
 3 mean, that's what I needed to know.

4 Q. In the course of your example
 5 about getting the car fixed and whether
 6 somebody has \$75 in car repairs, I want to
 7 apply that to what we're discussing here.

8 Would it be possible to have an
 9 opportunity cost for car repairs if the
 10 individual didn't even understand that they
 11 were spending \$75 on car repairs?

12 MR. SOBOL: Objection to the
 13 form.

14 QUESTIONS BY MR. CARTER:

15 Q. How does the concept of
 16 opportunity cost apply when someone doesn't
 17 know what they're spending the money on?

18 A. I think it still applies.

19 Q. How so?

20 A. Why not?

21 Q. So you think that -- well,
 22 strike that.

23 Would a reasonable and rational
 24 economic actor spend millions of dollars on
 25 something without knowing they're spending

1 that money on something?

2 A. They probably would not, but

3 that's different than whether -- what the

4 opportunity costs of that fund -- or those

5 funds are.

6 Q. So to the extent -- well,

7 strike that.

8 Did you see evidence in the

9 record you reviewed where individuals in

10 various divisions of the county disavowed any

11 opioid-related expenditures prior to, say,

12 2012?

13 Did you see that testimony?

14 MR. SOBOL: Objection.

15 THE WITNESS: I don't recall

16 it.

17 QUESTIONS BY MR. CARTER:

18 Q. Okay. Do you recall when --

19 well, do you know who Thomas Gilson is?

20 A. No, sorry.

21 Q. Do you know who Hugh Shannon

22 is?

23 A. No, I don't.

24 Q. Do you know the names of any of

25 the individuals in the Cuyahoga County's

1 Medical Examiner's Office, other than the two

2 I just gave you?

3 A. Not as I sit here today.

4 Q. Okay. Do you know when

5 Cuyahoga County Medical Examiner's Office

6 first identified an opioid-related problem?

7 A. An opioid-related problem?

8 Problem in what sense here

9 today? A death due to opioids, or what are

10 you asking?

11 Q. What they defined as a crisis.

12 Do you know when --

13 A. They defined as a crisis.

14 Q. -- they first identified a

15 crisis?

16 A. I'm not sure --

17 MR. SOBOL: Well, wait, wait.

18 Objection. Scope.

19 THE WITNESS: I didn't study

20 that.

21 QUESTIONS BY MR. CARTER:

22 Q. Okay. Do you believe it's

23 possible that the Summit County -- or excuse

24 me, strike that.

25 Do you believe it's possible

1 that the Cuyahoga County Medical Examiner's

2 Office spent millions of dollars on

3 opioid-related expenditures for years before

4 they realized they had an opioid-related

5 crisis?

6 MR. SOBOL: Objection. Scope.

7 Form.

8 You can answer.

9 THE WITNESS: I believe it's

10 possible.

11 Was that a question?

12 Well, I think maybe it's

13 possible. I didn't study it.

14 QUESTIONS BY MR. CARTER:

15 Q. Okay. On page 12 of your

16 nuisance report, if you turn there with me.

17 Okay. Is your measure of

18 opioid-related expenditures an objective or a

19 subjective measure?

20 A. With respect to the damages

21 report or -- I thought we were in the public

22 nuisance report.

23 Q. We're going back to the damages

24 report.

25 A. And in general in the damages

1 report, opioid-related expenditures you're

2 asking about?

3 Q. Yes.

4 Is it an objective or

5 subjective measure?

6 A. It's an objective measure.

7 Q. Okay. Are opioid-related

8 expenditures ever self-evident to the people

9 making them?

10 A. Sometimes, yes.

11 Q. Are you a political economist?

12 A. I border on that, yeah. Some

13 cases.

14 Q. Do you hold yourself out as an

15 expert political economist?

16 A. Well, it's something I've done

17 research on, so, again, depending on what the

18 question is, I have some expertise in that,

19 yes.

20 Q. In your prior litigation

21 experience, have you ever been offered as an

22 expert political economist?

23 A. Political economist? I don't

24 think I've conducted a litigation-related

25 investigation that you would call political

1 economy.

2 Q. Okay. In the course of your

3 report, you rely on data from Professor

4 Cutler from the National Center of Health

5 Statistics, correct?

6 A. Yes.

7 Q. Okay.

8 A. I believe so. Or maybe is it

9 Rosenthal?

10 Can you -- I'm sorry, can you

11 let me know where you're talking about so I

12 can take a look?

13 Q. Let me ask you this: Are you

14 aware that there are some NCHS data that's

15 considered restricted data?

16 A. Yeah, I'm generally aware of

17 this sort of issue, yeah.

18 Q. Did you personally sign a data

19 use agreement with NCHS for your work in this

20 engagement?

21 A. No, I did not.

22 Q. Okay. When you were working

23 with Greylock McKinnon Associates for the

24 nuisance report, do you know whether the

25 staff at Greylock McKinnon signed a data use

1 agreement with NCHS?

2 MR. SOBOL: Objection. Scope.

3 THE WITNESS: As far as I know,

4 they did not.

5 QUESTIONS BY MR. CARTER:

6 Q. Okay. As part of your

7 supervision of their work, were you concerned

8 whether they were using restricted data

9 appropriately?

10 MR. SOBOL: Objection.

11 THE WITNESS: My understanding

12 of where the NCHS data came in was via

13 Rosenthal report. If there's -- and

14 that's how I'm answering the question.

15 And any data use arrangements wouldn't

16 have been -- I wouldn't have known

17 about them.

18 If there's some other NCHS

19 piece, then let's take a look.

20 QUESTIONS BY MR. CARTER:

21 Q. You cited in your nuisance

22 report on page 13, I believe, Dr. Perri's

23 report, and you discussed that a little bit

24 today.

25 A. I see that.

1 Q. Okay. And you were asked

2 specifically about the question -- or excuse

3 me, the statement contained in there where it

4 says, "Information doctors were being given

5 about the dangers of prescription opioids was

6 in most cases false and systematically and

7 intentionally misleading."

8 Do you recall that?

9 A. I do recall that.

10 Q. Did you read in preparation for

11 your deposition today Dr. -- Professor

12 Perri's deposition?

13 A. No, I did not.

14 Q. If Professor Perri's testimony

15 was that he has not made any determination

16 whether specific marketing was unlawful,

17 false and misleading or whether it was lawful

18 and appropriate, if he's made no such

19 determination and only looked at the

20 marketing in the aggregate, does that impact

21 your reliance on his report on page 13 of

22 your report?

23 MR. SOBOL: Objection. Assumes

24 a fact not in evidence.

25 You can answer.

1 THE WITNESS: It's something I,

2 of course, would benefit from seeing

3 what Dr. Perri said, but it doesn't

4 seem to be in conflict with what I say

5 here.

6 QUESTIONS BY MR. CARTER:

7 Q. Are you aware of Professor

8 Perri's testimony that regardless of the

9 various input, regardless of the marketing,

10 at the end of the day, physicians have the

11 ultimate responsibility for selecting

12 medications to prescribe?

13 MR. SOBOL: Objection. Scope.

14 THE WITNESS: I'm sorry, was I

15 aware of what Dr. Perri -- was that

16 the question?

17 QUESTIONS BY MR. CARTER:

18 Q. Yes.

19 A. Was I aware of what he said

20 about that?

21 Q. Yes.

22 A. I'm not aware of what he said

23 about that.

24 Q. Do you agree that regardless of

25 the marketing input physicians have the

1 ultimate responsibility for selecting
2 medications to prescribe?
3 MR. SOBOL: Objection. Scope.
4 THE WITNESS: Well, generally
5 physicians help patients determine
6 what is the appropriate course of
7 treatment.
8 QUESTIONS BY MR. CARTER:
9 Q. Okay.
10 A. In -- you know, not just drugs,
11 but in other things, too.
12 Q. You were asked about your
13 definition of opioids, and it including
14 all-comers, prescription opioids, illicit
15 opioids. I want to follow up on other
16 illicit drugs.
17 Do overdose deaths and abuse
18 for nonopioid illicit, such as cocaine or
19 methamphetamine, do those factors in any way
20 into your damages report?
21 A. I don't think directly, no.
22 Q. Okay. You agree it would be
23 improper to include estimates in your
24 opinions of damages chargeable to the
25 defendants on account of cocaine abuse and

1 overdose deaths, correct?
2 MR. SOBOL: Objection. Scope.
3 THE WITNESS: Well, you know, I
4 interpreted my task as identifying
5 opioid-related deaths due to
6 shipments. And people die from other
7 things, but that's what I attempted to
8 identify.
9 QUESTIONS BY MR. CARTER:
10 Q. Does your nuisance report
11 include any damages related to cocaine abuse
12 and overdose?
13 MR. SOBOL: Objection. Form.
14 You can answer.
15 THE WITNESS: I'm thinking
16 where it might come in.
17 You know, if, in the elevated
18 health care costs section, any of
19 those elevated costs are associated
20 with, you know, a range of other
21 health care treatments, then different
22 things could have figured into that
23 estimation.
24 QUESTIONS BY MR. CARTER:
25 Q. Do you -- sitting here today,

1 did cocaine costs find their way into your
2 economic analysis for your nuisance report?
3 MR. SOBOL: Objection. Form.
4 You can answer.
5 THE WITNESS: Yeah, cocaine
6 costs -- what do you mean by "cocaine
7 costs"?
8 QUESTIONS BY MR. CARTER:
9 Q. Costs that any of the divisions
10 of either of the counties incurred as a
11 result of addressing cocaine.
12 A. Addressing. Oh, you mean
13 government expenditures?
14 Q. Yes.
15 A. So we're talking damages now.
16 So in terms of damages, I don't
17 think so.
18 Q. Do you know -- well, strike
19 that.
20 When you were coming up with
21 your division costs for the jail, do you know
22 the rate of expenditures related to dealing
23 with cocaine -- crimes involving cocaine?
24 A. The rate of expenditures. I
25 didn't investigate that.

1 Q. Do you know how those rates
2 compare historically over the years to the
3 rates dealing with prescription opioids?
4 MR. SOBOL: Objection. Asked
5 and answered. Scope.
6 THE WITNESS: I didn't study
7 that.
8 QUESTIONS BY MR. CARTER:
9 Q. Okay. What about with respect
10 to the indigent defendant category? Do you
11 know the costs to the indigent defendant with
12 those division expenditures related to
13 cocaine abuse?
14 MR. SOBOL: Objection. Scope.
15 THE WITNESS: I missed -- the
16 indigent what?
17 QUESTIONS BY MR. CARTER:
18 Q. The indigent defendants?
19 A. Indigent defendants.
20 Q. Yes.
21 One of the divisions that you
22 deal with in the court system, one of those
23 line item costs is indigent defendant cases,
24 correct?
25 A. Oh, okay.

1 MR. SOBOL: You don't mean the
2 distributors and manufacturers that
3 are indigent here.
4 THE WITNESS: Okay. That's
5 where I was confused here.
6 So it's not -- I thought it was
7 defendants in this litigation, but you
8 mean defendants in the legal process.
9 QUESTIONS BY MR. CARTER:
10 Q. Yes.
11 A. So would you mind asking me
12 again?
13 Q. Sure.
14 One of the divisions that you
15 looked at in the counties related to
16 expenditures in indigent defendant cases in
17 the counties, correct?
18 A. Yes.
19 Q. Okay. Do you know the rate of
20 expenditures related to cocaine abuse in
21 either county for any year that you looked
22 at?
23 MR. SOBOL: Objection. Scope.
24 Form.
25 THE WITNESS: I didn't study

1 that.
2 QUESTIONS BY MR. CARTER:
3 Q. Okay. I want to go back to
4 what I was trying to find earlier. It was
5 page 12 of your damages report.
6 And at the top of the page, the
7 paragraph that continues from the previous
8 page, towards the end, the second to the last
9 sentence of that paragraph reads as follows:
10 "This, in turn, implies that some harms, and
11 thus damages to bellwether governments, could
12 have been avoided if distributor defendants
13 had not acted improperly."
14 Did I read that correctly?
15 A. Yes, you did.
16 Q. So do you stand by that
17 statement?
18 A. Let me just take a look at the
19 paragraph since there's some thuses in there.
20 Yes, I do stand by it.
21 Q. Okay. So do you agree that if
22 the defendant distributors in this case had
23 only and exclusively acted in a way that you
24 would consider to be compliant with the law
25 and had done nothing allegedly improper, that

1 there would still be damages in this case?
2 MR. SOBOL: Objection. Scope.
3 You can answer.
4 THE WITNESS: I'm not sure.
5 QUESTIONS BY MR. CARTER:
6 Q. Do you agree that illicit
7 fentanyl is the overwhelming cause of
8 overdose death in Summit County currently?
9 MR. SOBOL: Objection.
10 THE WITNESS: "Cause" is an
11 important word here, and it's the
12 proximate cause. It may not be the
13 ultimate cause.
14 QUESTIONS BY MR. CARTER:
15 Q. Okay. So what's the ultimate
16 cause, if not illicit Chinese fentanyl, in
17 Summit County currently?
18 A. Well, this is something that
19 Professor Cutler studied, very explicitly.
20 Q. Do you have an expert opinion
21 as to the ultimate cause?
22 A. Well, with respect to the
23 ultimate cause, Professor Cutler looked
24 directly at illicit drugs in a post-2010
25 period, including up through -- I guess his

1 empirical work didn't cover 2018, but it went
2 up to 2016. And he estimated the share of
3 illicit deaths that were attributable to
4 shipments.
5 And that's an analysis about
6 the ultimate cause, which is going back to
7 what set the chain of events in motion. That
8 was what he determined.
9 Q. And I want to put Professor
10 Cutler out of my question.
11 My question is: Do you have an
12 expert opinion as to the ultimate cause?
13 MR. SOBOL: Objection. Scope.
14 THE WITNESS: Well, I would
15 rely on Professor Cutler for that.
16 QUESTIONS BY MR. CARTER:
17 Q. Okay. Do you have any
18 separate, independent opinion to add, or
19 would you just repeat what Professor Cutler
20 would have on that point?
21 MR. SOBOL: Objection. Scope.
22 THE WITNESS: Well, I didn't
23 study that personally. He did a very
24 good job, and I'm very happy to rely
25 on what he did.

1 QUESTIONS BY MR. CARTER:

2 Q. Same question for Cuyahoga

3 County: Do you yourself have an opinion

4 regarding the overwhelming cause of overdose

5 death currently in Cuyahoga County?

6 A. Well, in that case as well, I

7 didn't conduct an independent study. I

8 relied on the opinions of Professor Cutler.

9 Q. Okay. With respect to your

10 damages calculations, do the estimates in

11 your damage report account for any progress

12 increased deficiencies in opioid-related

13 expenditures on behalf of the county?

14 A. I'm not sure what you mean by

15 that.

16 Q. For example, does it take into

17 account whether, over the years, Cuyahoga

18 County, for example, improved its addiction

19 interventions related to opioids?

20 MR. SOBOL: Objection.

21 THE WITNESS: And then the

22 question was, does my analysis take

23 that into account?

24 QUESTIONS BY MR. CARTER:

25 Q. Yes.

1 A. The approach of opportunity

2 costs, again, doesn't require me to determine

3 the -- whatever value is received for the

4 services -- for the dollars that were

5 directed to opioid-related activities. So I

6 don't need to do that.

7 Q. Does your approach to

8 opportunity costs require any assessment of

9 the propriety of the spending?

10 A. By "propriety" you mean --

11 Q. Whether it's done efficiently,

12 whether it's done as an appropriate steward

13 of the county's money or whether it's

14 wasteful.

15 Does it make any normative

16 judgment as to the propriety of the

17 expenditures that are made?

18 A. The judgment is that, you know,

19 whether you got -- coming back to my car

20 example, whether or not the car repair shop

21 did a very good job or did a very bad job, it

22 still cost you \$75 to get that, and the \$75

23 could have been devoted to something else.

24 And so I think then in answer

25 to your question, if you consider propriety

1 to be what -- how good a job they did, then

2 it's not part of what I needed to know.

3 Q. Switching gears.

4 In the course of your analysis

5 of the medical examiner division, is one of

6 the things you looked at autopsies related to

7 opioid-related incidents?

8 A. That was part of the data that

9 fed in, yes.

10 Q. In the course of analyzing that

11 data, did you control for suicides caused by

12 opioids?

13 A. I wasn't controlling for

14 things, so I'm not sure what you're getting

15 at here.

16 Q. So did you exclude from the

17 data of opioid-related deaths, opioid-related

18 deaths caused by suicide?

19 MR. SOBOL: Objection. Asked

20 and answered.

21 THE WITNESS: Okay. It wasn't

22 necessary for me to exclude suicides

23 given the methodology I was applying,

24 which relied on the share of deaths

25 attributable to shipments from the

1 report of Professor Cutler.

2 QUESTIONS BY MR. CARTER:

3 Q. Switching gears to the Summit

4 County indigent defendants' point.

5 Do you know what rate the State

6 of Ohio reimburses the county for the outside

7 appointed counsel?

8 A. No, I'm sorry, I don't know

9 that.

10 Q. Do you know that the State of

11 Ohio does, in fact, reimburse Summit County

12 for the expenditures to outside counsel

13 appointed in indigent defendant cases?

14 A. I'm not aware of that.

15 Q. Are you aware that the State of

16 Ohio also reimburses Cuyahoga County for

17 appointment of counsel in indigent defendant

18 cases?

19 A. I'm not aware of that.

20 Q. If the State of Ohio reimburses

21 Summit County and Cuyahoga County between 40

22 and 50 percent for the cost of those

23 expenditures, would you make any adjustments

24 to that category of division expenditures in

25 your damages report?

1 A. Well, I think as you know, the
 2 damages methodology was intended to identify
 3 expenditures by the bellwether governments on
 4 opioid-related activities.
 5 And I investigated the degree
 6 to which some of those expenditures would
 7 have been supported by other levels of
 8 government. I found some, and I deducted
 9 them.
 10 I'm -- I think your -- if what
 11 you're saying has some basis, then it's
 12 something I would want to look at.
 13 Q. So to use your car example, if
 14 you paid \$75 to repair your car, walked out
 15 of the dealer and I gave you \$75, would that
 16 still be an opportunity cost?
 17 MR. SOBOL: Objection. Form.
 18 THE WITNESS: The -- it
 19 would -- the \$75 would still be an
 20 opportunity cost. The question would
 21 be who bears that opportunity cost.
 22 And just to change your example
 23 slightly, which I think is also in the
 24 spirit of your question, suppose you
 25 were insured and your insurer paid up

1 to \$50 for a repair, and then you only
 2 paid \$25. So the opportunity cost
 3 from the standpoint of you, the
 4 household, would be \$25.
 5 QUESTIONS BY MR. CARTER:
 6 Q. Thank you.
 7 You also discussed earlier
 8 today the national rates of opioid use
 9 disorder. I want to follow up on that.
 10 Do you know the criteria for an
 11 opioid use disorder?
 12 A. The medical criteria?
 13 Q. Yes.
 14 A. Broadly.
 15 Q. Okay. What is your
 16 understanding of those criteria?
 17 A. Well, this is similar to many
 18 mental health diagnoses. There's a set of
 19 kind of questions, there may be even
 20 something like 12, which you could call
 21 criteria for receiving a diagnosis.
 22 And then if the respondent has
 23 a yes to some subset of those, perhaps, say,
 24 7 of the 12, and this interferes with their
 25 normal activities and they occur over a

1 sufficient period of time, then the
 2 individual would be diagnosed.
 3 Of course, doctors do the
 4 diagnosis. But there's a protocol by which
 5 this diagnosis takes place that indicate that
 6 the person has opioid use disorder.
 7 Q. Have you ever made a diagnosis
 8 of opioid use disorder?
 9 A. Well, I'm not a physician, so
 10 I'm not -- I was never asked to diagnose
 11 anyone.
 12 But this is the kind of thing
 13 that if I'm studying an area -- mental health
 14 and substance abuse is something that I
 15 studied a lot, and not only those areas --
 16 then this is the kind of thing you need to be
 17 at least somewhat familiar with.
 18 Q. And if someone asked you --
 19 A. And -- I'm sorry. I have one
 20 more thing to add.
 21 Q. Sure.
 22 A. I've done research on the
 23 criteria that would be used to identify
 24 people with disease. A lot of these
 25 protocols are based on a question, so a

1 doctor might ask a patient a question about
 2 something. And the design of that question
 3 pattern is something I've done research on
 4 for mental health and substance abuse
 5 diagnoses.
 6 Q. You indicated that you've never
 7 been asked to make a diagnosis. So if
 8 someone did ask you to make a diagnosis, you
 9 would decline to do so, correct?
 10 A. If someone asked me to make a
 11 medical diagnosis, I would say, "You need to
 12 talk to a physician."
 13 Q. Okay. And the criteria for
 14 opioid use disorder was first articulated in
 15 the DSM-V, correct?
 16 A. Oh, I'm not sure where it was
 17 first articulated.
 18 Q. The portion cited in your
 19 report cites the DSM-V articulation, correct?
 20 A. That sounds right.
 21 Q. And are you aware that the
 22 DSM-V articulation of an opioid use disorder
 23 has three different severity classifications
 24 of an opioid use disorder?
 25 A. Generally I was familiar with

1 that, yes.

2 Q. Do you know what the three

3 classifications of severity are in DSM-V?

4 A. One of them's severe.

5 Q. That's correct.

6 Do you know the other two?

7 A. I would be guessing. I would

8 say mild? Yes?

9 Q. That is correct.

10 A. And not otherwise classified?

11 Q. Yeah. So mild, moderate and

12 severe.

13 A. Okay.

14 Q. In the course of using the

15 statistics for the opioid use disorder

16 prevalence in the counties, did you identify

17 or quantify in any way the breakdown within

18 that prevalence of those that would have a

19 mild opioid use disorder, those who would

20 have a moderate opioid use disorder, and

21 those who would have a severe opioid use

22 disorder?

23 A. Well, yes, my analysis was

24 based on the SOUD, which is a severe opioid

25 use disorder.

1 Q. Okay.

2 A. So and that's important,

3 because that is one area in which my work is

4 very conservative, to not take into account

5 any effects that are working through people

6 who might have mild or a moderate disorder.

7 Q. Do you know the prevalence rate

8 based on the national data for mild or

9 moderate opioid use disorder?

10 A. You know, I'm not sure.

11 Q. Based on your studies, do you

12 know -- are you familiar with DSM-V's

13 guidance to professionals using DSM-V in a

14 forensic setting?

15 A. In a forensic setting?

16 Q. Well, you didn't use it in this

17 case in a clinical setting, did you?

18 A. I used it in an epidemiology --

19 epidemiologic setting, I would say.

20 Q. And so in a forensic setting,

21 are you familiar with the guidance for how

22 DSM-V is to be used?

23 A. In general?

24 Q. Yes.

25 A. No, I don't know the

1 distinction.

2 Q. Are you familiar with the

3 guidance in DSM-V that the diagnostic codes

4 contained within are not to be used in a

5 checklist or a cookbook fashion?

6 A. Can you repeat that?

7 Q. Are you familiar with DSM-V's

8 guidance that the criteria contained within

9 it are not to be used as a checklist or a

10 cookbook?

11 A. In a forensic context or in

12 just a general --

13 Q. In all contexts.

14 A. Well, I told you what I was

15 familiar with, that there is a, you know, a

16 set of questions and there's time period and

17 there's severity.

18 Q. Okay. Do you know in your

19 research on DSM-V that it's meant to be used

20 with the application of clinical judgment?

21 A. Generally that's the case, yes.

22 Q. Okay. And in adopting the

23 prevalence rate from the national data that

24 you reviewed, did you apply any independent

25 clinical judgment to the populations in

1 Cuyahoga or Summit County to lead to the

2 conclusion that it was appropriate to use in

3 this case?

4 A. Well, I didn't apply

5 independent clinical judgment.

6 MR. CARTER: Okay. Based on

7 time, those are the questions I have

8 for you. I'm going to hand the mic to

9 another attorney.

10 Can we go off the record?

11 VIDEOGRAPHER: The time is

12 5:17 p.m., and we're off the record.

13 (Off the record at 5:17 p.m.)

14 VIDEOGRAPHER: The time is

15 5:19 p.m., and we're on the record.

16 CROSS-EXAMINATION

17 QUESTIONS BY MR. HALLER:

18 Q. Professor McGuire, I'm David

19 Haller of Covington & Burling.

20 Are you able to point me to any

21 accounting records or budget requests from

22 either county which documented any

23 reallocation of resources, either of employee

24 time or other recourses, from one area to be

25 redirected to opioid-related activities?

1 MR. SOBOL: Objection. Asked
2 and answered.
3 THE WITNESS: This is a
4 question we spent quite a bit of time
5 on this morning, and it's important to
6 keep in mind that my objective in this
7 report is to identify the funds
8 devoted to opioid-related activities
9 and interpret those as economic
10 opportunity costs, which is what I
11 tried to do in my report.
12 And the question of whether
13 there may or may not have been a
14 budget document requesting
15 reallocation isn't necessary for me to
16 be able to make that determination.
17 QUESTIONS BY MR. HALLER:
18 Q. My question wasn't whether it's
19 necessary, just whether you did it.
20 MR. SOBOL: Objection.
21 QUESTIONS BY MR. HALLER:
22 Q. Did you look for any such
23 documents?
24 MR. SOBOL: Objection. Asked
25 and answered.

1 THE WITNESS: In order to give
2 a clear and complete answer to this
3 question, I think it's important,
4 rather than just say yes or no --
5 QUESTIONS BY MR. HALLER:
6 Q. Can you include yes or no in
7 your answer, at least?
8 MR. SOBOL: Do you want to
9 withdraw the question? You want to
10 ask him a question? Do you want to
11 interrupt him? What do you want to
12 do?
13 MR. HALLER: He's going to give
14 a very long question -- a very long
15 response, and I'd like to make sure
16 yes or no is somewhere in there.
17 MR. SOBOL: Well, he'll answer
18 the question as he can truthfully tell
19 it, not without any coaching by you.
20 MR. HALLER: I think coaching
21 is your primary domain.
22 MR. SOBOL: I'm Bill Belichick,
23 so I don't mind being called a coach.
24 Go ahead, Professor. If you
25 can answer the question in a truthful

1 way, go ahead.
2 THE WITNESS: I think I can
3 answer the question.
4 But it is important to know,
5 for an audience or a reader of my
6 deposition transcript, to understand
7 that my objective in conducting my
8 report was to identify spending by the
9 bellwethers on opioid-related
10 activities, which is -- which
11 corresponds to the very well-regarded,
12 down-the-middle-of-the-plate concept
13 of economic opportunity costs.
14 And using that well-accepted
15 approach does not require me to
16 identify what other services the
17 bellwether counties did or would have
18 wanted to spend those funds on.
19 So, no, it was not necessary
20 for me to do that.
21 QUESTIONS BY MR. HALLER:
22 Q. And, no, you did not do that;
23 is that right?
24 MR. SOBOL: Objection. Asked
25 and answered.

1 QUESTIONS BY MR. HALLER:
2 Q. I asked you to include
3 somewhere in your long speech a yes or no
4 response to my question, which was whether
5 you did it.
6 MR. SOBOL: Well, again, he
7 gets to answer the question as best he
8 can and not --
9 MR. HALLER: If you have an
10 objection, say objection and then
11 leave it at that.
12 MR. SOBOL: No, I'll say
13 whatever I feel like.
14 MR. HALLER: You're going to
15 continue being the bully you've been
16 for two days? Is that what you're
17 going to do?
18 Objection. Yes or no?
19 MR. SOBOL: Professor, you can
20 answer the question as truthfully as
21 you can without having to include
22 words that are required by the
23 examining attorney.
24 THE WITNESS: I think I can be
25 completely responsive to your

1 question.

2 MR. HALLER: Thank you.

3 THE WITNESS: And I regard it

4 to be an important question since it

5 was asked so many times.

6 And the answer is the same:

7 that the purpose of my report was to

8 identify the opioid-related spending

9 of the various divisions in the

10 bellwether governments for various

11 years, and that's what I did.

12 The interpretation of that

13 spending is economic opportunity

14 costs. That tells me what I need to

15 know in order to answer my assignment.

16 It was not necessary for me to

17 know how else the funds might have

18 been used and what other possible

19 desired targets that the bellwether

20 divisions had to for those funds.

21 So it was not necessary, and I

22 didn't do it.

23 QUESTIONS BY MR. HALLER:

24 Q. Thank you.

25 You started out today talking

1 about a conversation you had had with Compass

2 Lexecon about OUD prevalence between the time

3 of your first day of deposition and today.

4 Do you remember that?

5 A. I do, yeah.

6 Q. I take it before you made that

7 call, you reviewed your report section

8 concerning OUD prevalence; is that right?

9 A. Yes, that's right.

10 Q. And what was it that was in --

11 how was it that your report wasn't

12 sufficiently clear to you such that you

13 needed clarification from Compass Lexecon?

14 What was it that wasn't

15 sufficiently clear?

16 A. Well, I -- there's lots of

17 things that one has to keep in mind in a

18 deposition. And what is clear, you know, to

19 me in rereading my report -- what I said to

20 myself is, well, let's go over this again

21 verbally so I'm in a better position to

22 answer questions about it.

23 So I just wanted to go over the

24 calculations of the OUD rate again so I would

25 be able to answer questions more carefully

1 and more completely.

2 Q. Sorry.

3 Do you remember what in

4 particular in your report wasn't sufficiently

5 clear to you such that you needed

6 clarification?

7 A. Well, I wouldn't put it that

8 way. It wasn't that there was something that

9 wasn't clear to me. I just found it helpful

10 to talk through some of the operations. It

11 helps set things in my mind.

12 Q. Now, in reference to mortality,

13 earlier today you stated that some of the

14 people who died in the two counties would

15 have been county employees.

16 Do you remember that?

17 A. Yes, I do remember that.

18 Q. Do you in fact know whether or

19 not anyone who died in Summit or Cuyahoga

20 from an opioid overdose was in fact a county

21 employee?

22 A. I think you're -- I mean, the

23 point of your question seems correct, that

24 that was an inference on my part, that there

25 were thousands of people who died, and

1 chances are very good that one of them or

2 more was a county employee.

3 Q. But you don't know for a fact

4 whether any were; is that right?

5 A. No. As I said, this was, I

6 think, a reasonable inference on my part.

7 Q. But do you know for a fact

8 whether any of them were?

9 MR. SOBOL: Objection. Asked

10 and answered already.

11 THE WITNESS: I thought it was

12 a reasonable inference on my part.

13 QUESTIONS BY MR. HALLER:

14 Q. Do you know the difference

15 between drawing a reasonable inference and

16 knowing something for a fact?

17 MR. SOBOL: Objection.

18 You can answer --

19 QUESTIONS BY MR. HALLER:

20 Q. Are those the same things to

21 you?

22 A. No, I understand the

23 difference.

24 Q. Okay. So I want to just know

25 whether you know for a fact whether any of

1 the employees -- whether any of the opioid
 2 overdose victims were in fact county
 3 employees.

4 MR. SOBOL: Objection. Asked
 5 and answered four times.

6 THE WITNESS: My statement,
 7 when that was brought about -- we just
 8 discussed that today -- was an
 9 inference on my part. It was not a
 10 fact.

11 QUESTIONS BY MR. HALLER:

12 Q. Okay. Are you aware whether
 13 the statistics given to you from Professor
 14 Cutler and Professor Rosenthal on which you
 15 relied were national statistics or whether
 16 they were Cuyahoga or Summit County-specific?

17 MR. SOBOL: Objection. Form.

18 Which statistics?

19 MR. HALLER: The harm
 20 percentages.

21 THE WITNESS: Well, there
 22 are -- it still depends on what
 23 statistics you're talking about.

24 QUESTIONS BY MR. HALLER:

25 Q. The Cutler harm percentages, do

1 you know whether those were national
 2 statistics or Summit and Cuyahoga-specific?

3 MR. SOBOL: Objection. Form.

4 THE WITNESS: The Cutler
 5 statistics, of which there's more than
 6 one in the report -- more than one set
 7 in the report, were primarily based on
 8 an econometric analysis of what he
 9 referred to in his report as large
 10 counties that included Cuyahoga and
 11 Summit. And in total, I think it was
 12 around 300 counties or so.

13 And his estimated shares of
 14 harms due to shipments was a -- kind
 15 of a summary number coming from that
 16 set of counties.

17 QUESTIONS BY MR. HALLER:

18 Q. And similarly with regard to
 19 Professor Rosenthal, are you aware of whether
 20 her misconduct percentages, whether those
 21 were in relation to national detailing
 22 efforts or whether those were specific to
 23 Cuyahoga and Summit?

24 MR. SOBOL: Objection. Form.

25 Which?

1 But you can answer.

2 THE WITNESS: Well, Rosenthal's
 3 statistics are somewhat different.
 4 She used national statistics on
 5 shipments and as her dependent
 6 variable, and then national-level
 7 information on detailing as her key
 8 independent variable.

9 So her percentages were based
 10 on a kind of national average.

11 MR. SOBOL: Okay. I think
 12 that's it.

13 MR. HALLER: Well, I have many
 14 more questions. I do think you used
 15 up, Counsel, a good 30-plus minutes in
 16 speaking objections and snide remarks,
 17 and I think we have a right to
 18 another, at least, 30 minutes.

19 MR. SOBOL: Well, that's -- no,
 20 you don't.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. SOBOL:

23 Q. Professor McGuire, I have a
 24 couple of questions for you.

25 You testified several times

1 yesterday -- last week and today regarding
 2 certain quantitative inputs you received from
 3 Dr. Cutler's report, correct?

4 A. Yes.

5 Q. Does your model depend upon the
 6 particular quantification of Dr. Cutler's
 7 shares in order for it to be operative?

8 MR. KEYES: Objection. Form.

9 THE WITNESS: Can I answer?

10 MR. SOBOL: Yes.

11 THE WITNESS: My model would
 12 work as well with other estimated
 13 shares from Cutler.

14 MR. SOBOL: Nothing further.

15 RECROSS-EXAMINATION

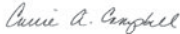
16 QUESTIONS BY MR. HALLER:

17 Q. Does your report reflect that
 18 additional work you'd need to do, or is that
 19 work you would have to do subsequently?

20 A. It's very straightforward math.
 21 So, I mean, I didn't do alternative
 22 calculations except with regard to Cutler
 23 Approach 1 and Cutler Approach 2. That, I
 24 think, illustrates exactly the thing we're
 25 talking about now: that if the percentages

1 were somewhat different, as they were in the
 2 two approaches, then it's -- you know, it's
 3 an Excel operation, really, to be able to
 4 determine damages.
 5 Q. But that doesn't appear in your
 6 report, correct?
 7 MR. SOBOL: Objection.
 8 THE WITNESS: Yes, it does.
 9 QUESTIONS BY MR. HALLER:
 10 Q. The alternative calculations
 11 appear in your report or they don't?
 12 A. Yes, they do.
 13 Q. Where are they?
 14 A. This is what's referred to as
 15 Approach 1 and Approach 2.
 16 Q. No, I'm saying apart from
 17 Approach 1 and Approach 2. If there were
 18 additional -- initial quanti --
 19 quantification done by Professor Cutler, you
 20 would need to do additional work yourself,
 21 right?
 22 A. What I indicated was that
 23 the -- and I thought the question was, does
 24 my report -- do my damages estimates apply --
 25 could they be determined with other Cutler

1 percentages.
 2 And the answer is, yes, it's
 3 easy. And the fact that I did it for
 4 Approach 1 and Approach 2, which involved
 5 different Cutler numbers, indicates the
 6 readily available calculations I could make.
 7 MR. SOBOL: Time's up. Thank
 8 you very much, everybody.
 9 VIDEOGRAPHER: The time is 7 --
 10 or 6:30 p.m., and this deposition has
 11 concluded and we're off the record.
 12 5:30.
 13 MR. CARTER: Obviously, you
 14 know, defendants reserve the right to
 15 seek additional time based on the
 16 extensive speeches by the witness and
 17 the speaking objections, but we'll
 18 deal with that offline.
 19 (Deposition concluded at 5:31 p.m.)
 20 - - - - -
 21
 22
 23
 24
 25

1 CERTIFICATE
 2
 3 I, CARRIE A. CAMPBELL, Registered
 4 Diplomat Reporter, Certified Realtime
 5 Reporter and Certified Shorthand Reporter, do
 6 hereby certify that prior to the commencement
 7 of the examination, Thomas G. McGuire, PhD,
 8 was duly sworn by me to testify to the truth,
 9 the whole truth and nothing but the truth.
 10 I DO FURTHER CERTIFY that the
 11 foregoing is a verbatim transcript of the
 12 testimony as taken stenographically by and
 13 before me at the time, place and on the date
 14 hereinbefore set forth, to the best of my
 15 ability.
 16
 17 I DO FURTHER CERTIFY that I am
 18 neither a relative nor employee nor attorney
 19 nor counsel of any of the parties to this
 20 action, and that I am neither a relative nor
 21 employee of such attorney or counsel, and
 22 that I am not financially interested in the
 23 action.
 24
 25 
 CARRIE A. CAMPBELL,
 NCRA Registered Diplomat Reporter
 Certified Realtime Reporter
 Notary Public
 Dated: May 1, 2019

1 INSTRUCTIONS TO WITNESS
 2
 3 Please read your deposition over
 4 carefully and make any necessary corrections.
 5 You should state the reason in the
 6 appropriate space on the errata sheet for any
 7 corrections that are made.
 8 After doing so, please sign the
 9 errata sheet and date it. You are signing
 10 same subject to the changes you have noted on
 11 the errata sheet, which will be attached to
 12 your deposition.
 13 It is imperative that you return
 14 the original errata sheet to the deposing
 15 attorney within thirty (30) days of receipt
 16 of the deposition transcript by you. If you
 17 fail to do so, the deposition transcript may
 18 be deemed to be accurate and may be used in
 19 court.
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1	ACKNOWLEDGMENT OF DEPONENT		
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3			
4	I, _____, do		
5	hereby certify that I have read the foregoing		
6	pages and that the same is a correct		
7	transcription of the answers given by me to		
8	the questions therein propounded, except for		
9	the corrections or changes in form or		
10	substance, if any, noted in the attached		
11	Errata Sheet.		
12			
13	Thomas G. McGuire, Ph.D. DATE		
14			
15	Subscribed and sworn to before me this		
16	_____ day of _____, 20 ____.		
17	My commission expires: _____		
18			
19	Notary Public		
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